

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PAUL PIZZUTO,)	
Plaintiff,)	
)	
v.)	DOCKET NO. 04-12492 GAO
)	
AIRBORNE EXPRESS, INC., STEVEN)	
CROSSKEN, JOSEPH HAMILTON,)	
GREG SWEATT AND ARTHUR)	
LEVERIS,)	
Defendants.)	

PLAINTIFF'S STATEMENT OF MATERIAL FACTS OF RECORD
AS TO WHICH THERE EXISTS A GENUINE ISSUE TO BE TRIED CONCERNING
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

In opposition to Defendants' motion for summary judgment and pursuant to Local Rule 56.1, Plaintiff submits the following statement of material facts of record as to which there exists a genuine issue to be tried.

1. Plaintiff was employed as a driver by Defendant Airborne Express ("Airborne"). Plaintiff worked for Airborne for more than 13 years. Exhibit 1, Plaintiff's MCAD complaint, para. 1.
2. Defendant Steven Crossken ("Crossken") was Airborne's District Field Services Manager at Plaintiff's workplace from January 14, 2002 to March 10, 2003. Defendant Joseph Hamilton ("Hamilton") succeeded Crossken in that position. Exhibit 1, Plaintiff's MCAD complaint, para. 3; Defendants' Statement of Facts, para. 18-19.
3. In 2003, there were approximately 125 drivers at Plaintiff's worksite and 6 or 7 supervisors. Exhibit 8, Plaintiff Dep. at 58-59. The drivers did their own sorting and loading of packages before going out to deliver them. Exhibit 8, Plaintiff Dep. at 58-59 and 74-78.

Plaintiff's Work Environment at Airborne

4. Airborne is a union shop. The union is Teamsters Local 25 (the "Union"). Exhibit 1, Plaintiff's MCAD complaint, para. 11.
5. The work environment at Airborne was such that management would write employees up for relatively minor infractions and impose more severe discipline than the situation called for. Some employees, such as Plaintiff, would be subjected to increased scrutiny and singled out for disciplinary actions. Defendants' Exhibit 4 to Perlman Aff., Plaintiff's Ans. to Int. 12.
6. Gerald Halloran, a union steward at Airborne for 20 years, testified that, in 2002-2003, the work environment there had a lot of stress and friction, "like the kitchen is hot", "you're always waiting to get it – you're always waiting to get accused of something wrong." Exhibit 2, Halloran Dep. at 6-7. Halloran stated that Plaintiff was being "overmanaged" by Airborne management, that they were "scanning" Plaintiff and watching his paperwork more than other people. Exhibit 2, Halloran Dep. at 37.
7. Halloran explained that the "scanning" was what was called "audit scans" conducted by Airborne management. Drivers would scan their out-for-delivery packages with a hand-held computer before leaving in the morning. Management would then select two or three drivers a day before they left the building to "audit scan" or rescan packages on the truck to make sure the driver had properly scanned all the packages. Halloran stated that audit scans were not random, but instead targeted. Airborne scanned "who they wanted to scan." In the last week of Plaintiff's employment, Plaintiff was scanned four times in a week, which is "kind of high." In fact, one of Plaintiff's final warning letters was from an audit scan showing missed scans. Exhibit 2, Halloran Dep. at 7-11; Exhibit 3, Warning Letter dated 7/24/03.

8. James O'Brien, a fellow driver of Plaintiff, similarly testified that in 2002-2003 Airborne management "tended to get on" Plaintiff more than the other drivers. Plaintiff was "micromanaged." For example, Station Managers Crossken and Hamilton would "personally" audit scan Plaintiff's truck instead of having the supervisors doing it. They did not do that to any other driver. Exhibit 4, O'Brien Dep. at 8-11. Also, while an audit scan usually involved scanning 10-12 pieces, in Plaintiff's case, they scanned his whole truck. Exhibit 4, O'Brien Dep. at 14-15. Airborne was "hot" at the time on issuing warnings to drivers who missed scans. Plaintiff would argue with them regarding the results of the audit scans and would rescan his whole truck after the audit scan. Management would then be "mad" at Plaintiff for not departing the station quickly enough due to this rescanning. Exhibit 4, O'Brien Dep. at 15.

9. O'Brien testified that the work environment at Airborne was such that drivers were not treated the same with respect to discipline, but instead some drivers were treated with more severity than others - "they do it at their whims." Exhibit 4, O'Brien Dep. at 11-13. O'Brien stated that the reason for the difference in treatment was "personality," especially with Defendants Crossken and Leveris. If anyone questioned their authority, Crossken and Leveris would not let it go. Instead, they would "stay on" the driver and try to "push the driver's buttons." They would definitely do that with Plaintiff since he would respond by getting upset. Plaintiff was like "the kid in first grade" that some kids would pick on, "the more you pushed him, the more you get a reaction." Exhibit 4, O'Brien Dep. at 13-14. Defendant Crossken personally "micromanaged" Plaintiff instead of following the usual practice of allowing his immediate supervisor deal with him. Crossken seemed to "have it out for" Plaintiff and Plaintiff was "paranoid" that they were out to fire him. Defendant Leveris was "on" Plaintiff constantly. Defendant Hamilton was not as bad as Crossken, but Defendant Leveris was still the "number

two guy” so it was “business as usual” after Hamilton succeeded Crossken. Exhibit 4, O’Brien Dep. at 19-20.

10. James Sambataro, a fellow driver of Plaintiff, similarly testified about the work environment. Defendants Crossken, Hamilton and Leveris were “always on” Plaintiff. There was ‘no respect, no communication,” “just feeding the fire back and forth.” Exhibit 5, Sambataro Dep. at 16. They would be “on” Plaintiff at least once or twice a week. Exhibit 5, Sambataro Dep. at 17-18. Plaintiff would respond to this “as everyone else did.” There would be raised voices by both sides. “It was always loud most of the time.” Exhibit 5, Sambataro Dep. at 19. There was disparate treatment on discipline depending on the supervisor or the driver involved. Id. at 30. Plaintiff was singled out for discipline. Id. at 50-51.

Plaintiff’s Mental Breakdown and FMLA Leave

11. During the year 2002, Plaintiff was the subject of eight separate disciplinary actions. Exhibit 6, Plaintiff’s Disciplinary Record. These included written warnings for failure to scan shipments, tardiness, failing to turn in a gas card, misconduct for alleged “grandstanding” on 4/4/02 when he protested the prior disciplinary actions and for inappropriate conduct on 4/5/02 for making bird sounds and other noises and insubordination. On 9/26/02, Plaintiff received a suspension for insubordination, which was reduced to a writing warning via union intervention. Exhibit 1, Plaintiff’s MCAD complaint, para. 12 and 21.

12. On 5/24/02, Crossken discharged Plaintiff from employment for “the cardinal offense of dishonesty – theft of company time.” The basis for the discharge was that Plaintiff had fallen asleep on company property during work hours while on light duty from a work injury. Plaintiff claims that had fallen asleep due to a combination of the medications he was taking for his work injury and sleep apnea from which he suffered. Plaintiff grieved the discharge through the Union

and the discharge was reduced to a two-day suspension on 6/3/02. Exhibit 1, Plaintiff's MCAD complaint, para. 14-17. Plaintiff was told to report to work on the following day, 6/4/02, but when he reported to work Crossken told him that he was "still fired" until Crossken spoke to his Regional Manager. Crossken delayed Plaintiff's return to work for an additional day. Exhibit 1, Plaintiff's MCAD complaint, para. 18-19.

13. On 7/10/02, Plaintiff filed a harassment complaint with the union against Crossken with regard to his discharge and Crossken's alleged ongoing discrimination and retaliation against him. Exhibit 7, Plaintiff's Harassment Complaint.

14. Plaintiff states that, during the period from 6/7/02 to 10/14/02, Crossken continued to harass him make his daily workday difficult, including issuing disciplinary actions and conducting excessive audit scans. Exhibit 1, Plaintiff's MCAD complaint, para. 21. Plaintiff characterized his treatment by Airborne management as "abuse" and "constant harassment." Exhibit 8, Plaintiff Dep. at 47-48.

15. Plaintiff claims that Airborne's treatment of him affected his physical and emotional health. On 10/14/02, Plaintiff's doctor took him out of work. Exhibit 1, Plaintiff's MCAD complaint, para. 23. Plaintiff applied for FMLA leave because he was in a "state of mental breakdown." Exhibit 8, Plaintiff Dep. at 286-287. Plaintiff submitted a written request for FMLA leave to Airborne with medical support from his physician, Dr. John Chang. Exhibit 9, FMLA Application; Exhibit 8, Plaintiff Dep. at 285-286. The diagnoses were insomnia, sleep apnea, acid reflux, anxiety disorder, inability to cope, stress, tremor, poor concentration and "lack mechanism to cope." Id.

16. Dr. Chang confirmed that Plaintiff was in a state of mental breakdown in October 2002, suffering severe depression and many associated medically related illnesses. Exhibit 10, Dr.

Chang Letter dated 4/24/03. Dr. Chang noted Plaintiff's history of "months of emotional insults" at work and "unfounded charges" by his manager. Plaintiff stated that he was constantly under the fear of being terminated if he stepped out of line and was in a "state of confusion" for several months. *Id.*

17. Plaintiff submitted his FMLA leave request paperwork, including the medical documentation, directly to Defendant Crossken on 10/21/02. Exhibit 11, Letter to Crossken Dated 10/21/02. Defendant Leveris confirmed that FMLA paperwork like Exhibit 11 would have crossed Crossken's desk. Exhibit 12, Leveris Dep. at 12-14.

18. By letter dated 10/28/02, Airborne corporate approved FMLA leave for Plaintiff starting 10/14/02. A copy of that approval was sent to Crossken. Exhibit 13, FMLA Approval.

19. Plaintiff was out of work on FMLA leave from 10/14/02 to 2/24/03. He received short-term disability benefits through the Union benefit plan during that time. Exhibit 1, Plaintiff's MCAD complaint, para. 24 and 26.

20. Plaintiff believes that he was not emotionally ready to return to work when he was released to work as of 2/24/03, that he was still "very ill and depressed" with "some serious emotional issues." He states that he was "forced" back to work by the union because the union did not want to continue to pay short-term disability benefits. The union doctor, Dr. Heckler, met with Plaintiff and asked him why he couldn't go back to work. Dr. Heckler "put" it to Plaintiff two or three times, "We need a return date to work." Plaintiff felt like he was "being backed into a corner" and "out of frustration" gave Heckler the 2/24/03 date. Exhibit 8, Plaintiff Dep. at 126-129.

21. Plaintiff states that from the time he returned to work on 2/24/03 until he was terminated in July 2003, his emotional state was still vulnerable, making him more susceptible to stress and

impairing his ability to cope with stress. Defendants' Exhibit 4 to Perlman Aff., Plaintiff's Ans. to Int. 4.

Plaintiff's First Day Back from FMLA Leave

22. When Plaintiff returned to work from his medical leave on 2/24/03, Defendant Crossken was still the plant manager. Exhibit 8, Plaintiff Dep. at 83. On that first day, Plaintiff was assigned the worst truck in the station. Exhibit 8, Plaintiff Dep. at 94. The other drivers were "snickering" because they knew the truck Plaintiff had. Id. The truck had no gas and an unworkable bulkhead door key. Plaintiff had to take the time to gas up. The defective bulkhead door key meant that Plaintiff would not be able to properly work out of his truck cab. He would be forced to go to the back door on every delivery. Over the course of 60-70 deliveries, this meant much more effort and time to complete his route. In addition, Plaintiff was provided with a scanner with missing keys, preventing him from properly scanning. Defendants' Exhibit 4 to Perlman Aff., Plaintiff's Ans. to Int. 5. The truck was "kicking and bucking" when Plaintiff left the station and broke down within 2 miles. Plaintiff managed to get the truck back to the station. Crossken instructed him to offload all his freight and load it onto another truck. Exhibit 8, Plaintiff Dep. at 84. These problems caused Plaintiff to be unable to "make service" that day. Crossken had to send another driver out to assist Plaintiff with his deliveries. Id.

23. When Plaintiff returned to the facility after finishing his route that day, he had a very minor accident in the facility. There were skids or pallets that had been left on the floor near the entrance to the facility that Plaintiff tried to navigate around. In the course of that, Plaintiff scraped a yellow pole resulting in yellow paint on the truck bumper. Exhibit 8, Plaintiff Dep. at 85 and 100-103. Crossken's response to this incident was to issue Plaintiff a written warning for a "preventable" accident. Exhibit 6, Plaintiff's Disciplinary Record. Plaintiff believed that the

stressful events on his first day back from medical leave led to this minor accident and that Crossken should have taken that into account before issuing more discipline. Exhibit 8, Plaintiff Dep. at 85 and 99.

Defendant Hamilton Becomes the Station Manager

24. Defendant Hamilton succeeded Crossken as District Field Services Manager in March 2003. Hamilton had a meeting with Plaintiff. Hamilton told Plaintiff that Crossken had left him information that Plaintiff was a “troublesome employee.” Exhibit 1, Plaintiff’s MCAD complaint, para. 28-29. Plaintiff did his best to explain his side of things to Hamilton. Id. Plaintiff told Hamilton that he was taking medications for anxiety and depression. Exhibit 8, Plaintiff Dep. at 189-190. Hamilton and Plaintiff mutually agreed to “start over from square one” and to move on from any problems that Plaintiff had with Crossken. Exhibit 8, Plaintiff Dep. at 107-108.

25. Plaintiff states that Hamilton was also aware of his medical problems because in April 2003, Plaintiff handed Hamilton the D.O.T physical paperwork that listed Plaintiff’s medical conditions and medications. Exhibit 14, D.O.T Physical Dated 4/30/03; Exhibit 8, Plaintiff Dep. at 191-192. Exhibit 14 does in fact list Plaintiff’s medical conditions, including sleep apnea, anxiety and depression. It states that Plaintiff takes paxil and that Plaintiff was out of work from 10/14/02 to 2/24/03 due to an episode of anxiety and depression. Exhibit 14 further states that Plaintiff would be certified as fit to drive for only 3 months (vs. the usual 2 years) until 7/30/03 pending further documentation from his doctor regarding the sleep apnea. Id. at page 2; Exhibit 8, Plaintiff Dep. at 192-193.

26. Plaintiff states that things “went well” for several months after Hamilton took over. Then Plaintiff began to notice that packages were “disappearing” from his truck. Plaintiff spoke to

Hamilton about the missing packages, but Hamilton responded that Plaintiff was imagining it, that he was “paranoid”. Exhibit 8, Plaintiff Dep. at 115; Exhibit 1, Plaintiff’s MCAD complaint, para. 30; Defendants’ Exhibit 4 to Perlman Aff., Plaintiff’s Ans. to Int. 5.

Plaintiff is Sent for a Drug and Alcohol Test

27. On 7/16/03, Defendants Hamilton and Leveris called Plaintiff into the office. Hamilton told Plaintiff that he was suffering from paranoia and that he was making threatening gestures and looks to supervisors. Hamilton told Plaintiff he was being sent for a drug and alcohol test. Exhibit 1, Plaintiff’s MCAD complaint, para. 31-32; Plaintiff testified that Hamilton told him that he was “worried” about him, that he was “acting too suspicious.” Exhibit 8, Plaintiff Dep. at 117. Plaintiff told Hamilton that he had “some medical issues, nothing to do with drugs and nothing to do with alcohol” and that his medical problems were known and documented.

However, Hamilton insisted on sending him for the test. *Id.* Plaintiff does not believe that he was acting suspiciously or that there was any valid reason to send him for the test. Plaintiff felt that the company was looking for an excuse to fire him. Exhibit 8, Plaintiff Dep. at 176-177.

28. Plaintiff was taken to a clinic for the drug and alcohol test by Defendants Hamilton and Leveris. He was also accompanied by a union employee, James O’Brien. Exhibit 8, Plaintiff Dep. at 170-171. Plaintiff does not remember much of what happened or what he may have said at this time since he was “very frustrated and irate” that he was being sent for the test and that he was suffering from bipolar disorder, which may have affected his behavior and his memory. Exhibit 8, Plaintiff Dep. at 172-174. The test came back negative for drugs and alcohol. Exhibit 1, Plaintiff’s MCAD complaint, para. 32.

28. Hamilton wrote a memorandum, Exhibit 15, and an email, Exhibit 16, regarding the “probable suspicion” drug and alcohol test. Hamilton stated in Exhibit 15 that Plaintiff’s “mood

swings” were becoming too common and that his behavior lately with supervisors was “loud and boisterous.” Hamilton states that he confirmed with Defendant Leveris that Plaintiff on more than one occasion had said that he was “heavily medicated” from his doctor. Based on his own observations and those reported to him by Supervisors Chris Demmons and Mike Trudeau, Hamilton decided to take Plaintiff out of service pending the drug and alcohol test. Chris Demmons had reported to Hamilton that Plaintiff had been acting “very paranoid and strange” and had even made some threatening remarks like “I will get you guys.” Exhibit 16.

29. Supervisor Chris Demmons wrote an email regarding his observations of Plaintiff. Defendants’ Exhibit 2 to Hamilton Aff. Demmons wrote that he was Plaintiff’s supervisor for fourteen months and that during that time Plaintiff had been out on workman’s compensation for seven months “due to various physical and mental health issues.” Demmons wrote that Plaintiff “harbors unfounded delusions” that management was conspiring against him and that Plaintiff claims “that some unknown entity is stealing freight from his truck.” Demmons related that Plaintiff was unable to scan his freight correctly and that, instead of rescanning it and leaving, he spent an hour counting and recounting it, while blaming management for sabotaging him. Plaintiff kept telling Demmons that “He’d fix me ... he’d get me.” Demmons stated that although Plaintiff has “rambled” on like this before, “a threat is a threat, innocuous or otherwise.” Demmons’ opinion was that Plaintiff needed “professional help.” Id.

30. Supervisor Mike Trudeau also wrote an email regarding his observations of Plaintiff on 7/14/03. Defendants’ Exhibit 1 to Hamilton Aff. Trudeau wrote that Plaintiff became irate over a problem with his package count and claimed that “someone did this to him.” Plaintiff used vulgar language and stated that he would “get the guys’ that did this to him and that

Trudeau knew who it was. When Trudeau asked who Plaintiff thought that was, Plaintiff replied, “The bald guy with glasses.” This was a nonsensical response. Exhibit 25, Hamilton Dep. at 61.

31. James O’Brien accompanied Plaintiff to the drug and alcohol test as the union representative. Exhibit 4, O’Brien Dep. at 28-29. They drove to the clinic in Leveris’s truck with Leveris and Hamilton in the front seat and Plaintiff and O’Brien in the back. Id. at 29.

32. The union contract permitted drug and alcohol testing of employees if there was “probable cause,” for example, if you were slurring your words, unsteady on your feet, falling asleep – anything typical of someone under the influence of drugs or alcohol. Exhibit 4, O’Brien Dep. at 29-31. O’Brien stated that this was the first time in his 20 years at that facility that someone was pulled out of service for a drug test. There was one for alcohol, but the guy was drunk in the building. Id. at 33-34. Union Steward Gerry Halloran agrees that Plaintiff was only the second probable suspicion drug and alcohol test in more than 20 years. Exhibit 2, Halloran Dep. at 13-14.

33. Plaintiff did not appear to O’Brien to be under the influence of drugs or alcohol. Plaintiff just appeared very agitated about that accusation. Exhibit 4, O’Brien Dep. at 30. O’Brien asked Hamilton and Leveris what was the “probable cause” for the test, but they would not answer him. Id. at 29-31.

34. O’Brien questioned whether Hamilton and Leveris really thought that Plaintiff was on drugs or a danger to himself or others because they let Plaintiff drive and load his truck that morning and work the machinery on the belt until a replacement arrived before sending him for the drug and alcohol test. O’Brien stated that if they thought Plaintiff was a danger, they would not have allowed him to work the sort, but instead would have just had him sit in the breakroom. Exhibit 4, O’Brien Dep. at 29-30 and 36.

35. At the clinic, Plaintiff did not want Airborne to touch his urine sample. He wanted it shipped with UPS or FedEx “because I don’t trust these people.” Hamilton and Leveris starting laughing when Plaintiff said that. Exhibit 4, O’Brien Dep. at 31-32.

36. At the clinic, Plaintiff paid for his own separate drug and alcohol test. The test was done immediately and came back negative. However, Plaintiff was told that he would still be taken out of service until the official lab results came in. Exhibit 4, O’Brien Dep. at 31-32.

37. O’Brien never saw Plaintiff act in a threatening manner. Plaintiff “wasn’t that type of kid.” He was not a “threatening kid.” Plaintiff is “as big as a pint of ice cream.” He could be argumentative, however. If he thought he was right, he would argue his cause. Exhibit 4, O’Brien Dep. at 34-36.

38. O’Brien did hear Plaintiff say to Leveris, while they were waiting to go for the drug test, “Let me tell you. When this is said and done, the police are going to get you.” Leveris replied, “Is that a threat?” Plaintiff said, “No, that is not a threat. The police are going to get you.” Exhibit 4, O’Brien Dep. at 34-35. That is all O’Brien ever heard Plaintiff say. O’Brien did not think that was a threat. Plaintiff was saying that what they were doing was illegal and that they were going to be arrested for it. However, O’Brien did not feel it was a police matter. It was a union matter. Id.

39. O’Brien did not believe that any of the Airborne managers or supervisors were afraid of Plaintiff. For example, Plaintiff was sitting right behind Leveris when they drove to the clinic. If Leveris were afraid of Plaintiff, he wouldn’t have had Plaintiff sitting right behind him. Also, they let Plaintiff work the sort and move his truck around that morning before the drug test. Exhibit 4, O’Brien Dep. at 36.

40. O'Brien testified that over the years that he has seen what Airborne does when drivers actually threaten a supervisor. The supervisors file police reports and the drivers are escorted off the property by the police. Then it was a union issue to get your job back. Exhibit 4, O'Brien Dep. at 37-38.

41. On the day after Plaintiff's drug and alcohol test, O'Brien asked supervisor Chris Demmons what the probable cause was for sending Plaintiff for the test. Demmons stated that Plaintiff was sent for the test because, the day before, Plaintiff had rescanned his whole truck and left the building 40 minutes late and did not "make service." There was no other reason given. Exhibit 4, O'Brien Dep. at 36-37.

Hamilton Meets with Plaintiff Concerning the Probable Cause Test Results

42. On 7/21/03, Hamilton met with Plaintiff regarding the test results. Present were Hamilton, Leveris, Plaintiff and Union Steward Gerry Halloran. Exhibit 17, Hamilton Memo Dated 7/21/03. Hamilton informed Plaintiff that the test results were negative and that he would be paid for any lost time. Hamilton told Plaintiff that his "mood swings" were too common and that his "paranoid behavior" was affecting his job. *Id.* Hamilton stated that Plaintiff had made "specific threats" to four supervisors, including to him, and that the next threat or statement that could be interpreted as a threat would lead to action, including termination. *Id.*

43. Plaintiff asked Hamilton what threats did he make and to whom. Hamilton replied that they were made to Leveris, Chris Demmons, Mike Trudeau and to him, and that the threats were, "He is going to get someone," "Wait til I get him," "Joe, you will get yours." Plaintiff answered that these were not threats to specific people, just statements he made "that when I find out who is screwing with me, I will handle." Exhibit 17.

44. Plaintiff told Hamilton at the meeting that he was under medical care and that he was taking prescribed medicines for his condition. Plaintiff told Hamilton that if he needs to call his doctor, he should do so. Exhibit 8, Plaintiff Dep. at 186-187. Plaintiff states that Hamilton was “well aware” that he was having emotional issues and was on prescribed medicines when he came back to work in February 2003. Id.

Plaintiff’s Behavior on 7/22/03 and 7/23/03

45. Hamilton wrote a memo on 7/22/03 regarding what he referred to as “2 more examples” of Plaintiff’s “paranoia schizophrenia.” Exhibit 18, Hamilton Memo Dated 7/22/03. The memo recites that Plaintiff complained about discrepancies in his scans and that he felt there was a “conspiracy going on.” Plaintiff then called the station pretending to be a customer to investigate the alleged discrepancies.

46. Hamilton Hamilton wrote a memo on 7/23/03 regarding Plaintiff’s alleged behavior at a group video presentation. Hamilton claimed that Plaintiff was staring at him “with a very serious look in his eye.” Exhibit 19, Hamilton Memo Dated 7/23/03. Hamilton goes on to say that he instructed Supervisor Greg Sweatt to do a “100% scan” of Plaintiff’s truck. Hamilton states that Plaintiff had been complaining to him on a regular basis that someone was “messing” with his truck. Hamilton remarks, “If I audit him each day, I can prove what is on his truck at depart time.”

47. Union steward Gerry Halloran testified that audit scans were used as a weapon to “leap on an employee.” It was done to “outspoken people.” “It puts a lot of pressure on you.” Employees were discharged for it. Exhibit 2, Halloran Dep. at 69-70. Plaintiff told Halloran that he felt the company was “out to get him” with these audit scans. Plaintiff could not understand why they were coming up. Exhibit 2, Halloran Dep. at 21-22.

Events of 7/24/03

48. Supervisor Mike Trudeau was instructed to do a full truck audit on Plaintiff on 7/24/03. Defendants' Exhibit 8 to Hamilton Aff. Supervisor Greg Sweatt had audit scanned Plaintiff's entire truck the day before. Id. Trudeau recounted alleged threats made by Plaintiff while Trudeau was performing the audit scan. Id.

49. Plaintiff was supposed to get 3 days' pay that he lost due to being put out of service for drug test on his next regular payday on Thursday, 7/24/03. Paychecks would come in by plane on Thursday mornings in a red bag from Airborne corporate in Seattle. However, on Thursday morning, there was no check for Plaintiff for the lost time. Plaintiff spoke to Defendant Leveris regarding the missing money and was told by him that he would have to file a union grievance for it. Exhibit 8, Plaintiff Dep. at 209-211. Plaintiff was very perturbed by this and asked Gerry Halloran, the union steward, to address it with Hamilton. Plaintiff then left for his route. Id. at 210.

50. Union Steward Gerry Halloran confirms that Plaintiff was not given the check for the lost time when it was supposed to be given and that Plaintiff was upset. Exhibit 2, Halloran Dep. at 14-16. Halloran states that it was not necessary for Plaintiff to file a grievance to get the money, as claimed by Leveris. Id. Later on that day, Hamilton told Halloran that they "found" the check. Id. at 16-17.

51. While Plaintiff was off on his route, Hamilton and Leveris had a meeting with Halloran and Chief Union Steward Quigley. The subject of the meeting was "problems" with Plaintiff. Hamilton and Leveris discussed that Plaintiff had been on FMLA for a mental issue and that they thought that maybe he should see a doctor or take a leave. Exhibit 2, Halloran Dep. at 17-19. Hamilton said that Plaintiff had been threatening people and acting "weird" and paranoid. Id.

Hamilton and Leveris wanted Halloran to meet with Plaintiff and tell him that he was going to be issued warning letters and to talk to him about seeing the union doctor and getting union disability benefits. *Id.* at 21-25. Hamilton and Leveris thought that, based on the way things were going with the scanning and arguments every day, Plaintiff or the company should get “some medical opinions on him.” *Id.* at 24-25.

52. Hamilton told Halloran that Plaintiff was making threats to supervisors like Chris Demmons, saying “you’re going to get yours,” “the FBI is going to arrest you,” or “your day is coming.” There was no threat of physical violence. Exhibit 2, Halloran Dep. at 19-20.

53. Based on what Hamilton and Leveris were telling him, Halloran stated that Plaintiff’s remarks were “non-threatening.” If Plaintiff had been “threatening,” the managers would have called the police and had him escorted from the property, liked they have done with others in the past. Exhibit 2, Halloran Dep. at 19-20.

54. Hamilton and Leveris did not appear genuinely afraid of Plaintiff. Instead they appeared agitated and embarrassed that someone was questioning their authority. Exhibit 2, Halloran Dep. at 25.

55. Halloran thought that Plaintiff appeared “very stressed,” “angry at the company, paranoid, scared he was going to be fired.” Exhibit 2, Halloran Dep. at 22. Plaintiff told Halloran that there was a conspiracy against him. When Plaintiff was being audit scanned, Plaintiff would say things to the supervisors like, “You’re going to get yours, your name is going to be in the paper, the FBI is watching you.” Plaintiff was ranting and talking nonsense. The threats were not physical threats and the supervisors were not afraid that Plaintiff was going to be physical. *Id.* at 30-32.

56. Hamilton wrote that he met with Chief Steward Joe Quigley and Steward Gerry Halloran on 7/24/03 about Plaintiff's threats. Halloran stated that he felt Plaintiff needed medical help because he had a similar experience with Plaintiff that morning where Plaintiff was mad about the check. "After an hour of debate," the three decided that Gerry and Joe would take Plaintiff aside when he came off the road and ask him if he needed help. They would offer the union's disability benefits and refer him to the Teamster doctor for help. If Plaintiff did not think he needed help, then Plaintiff would need to meet with Hamilton and Leveris and be issued a written warning that he would be put out of service if he made any more threats or aggressive gestures. Plaintiff was also going to be issued a written warning for failing to scan a shipment. Exhibit 20, Hamilton Memo Dated 7/24/03.

57. Hamilton also wrote that management has had an ongoing issue with Plaintiff's threatening behavior and paranoia and that Plaintiff's behavior had escalated to the point where Hamilton felt that Plaintiff was a safety risk. Hamilton stated that in a long discussion with union representatives about Plaintiff on 7/23/03, they all came to the conclusion that "something was not right" with Plaintiff. Exhibit 21, Hamilton Memo Dated 7/25/03. Earlier that day, Plaintiff had an issue with the "way his paycheck was processed" and "this really fired him up." On his way out of the building, Plaintiff made threatening remarks to three supervisors. Hamilton stated that Quigley and Halloran planned to have a private conversation with Plaintiff and offer the union's disability resources to Plaintiff as help. "Depending on how that conversation went," Hamilton was prepared to issue Plaintiff a written warning stating that Plaintiff would be terminated on the spot for the next threatening remark or gesture. Id.

58. When Plaintiff returned from his route, he was met by Gerry Halloran and Joe Quigley. They handed him the check for the missing pay and said that they "found" it. They told Plaintiff

that, before he could keep the check, he had to meet with Hamilton, who wanted to issue two warnings to him, one for threatening a supervisor and one for a delivery. Exhibit 8, Plaintiff Dep. at 210-212 and 226. Plaintiff stated that he “had all he could take” with the whole situation, “going for the drug test, then supposedly putting in my check, then not putting in my check, then coming back, getting my check, then telling me to go see Joe because I have two warning letters.” Plaintiff gave them back the check and left. Exhibit 8, Plaintiff Dep. at 211-212.

59. Halloran described the encounter as follows. They told Plaintiff they found his check. He was upset that they didn’t give it to him that morning. Plaintiff was “pretty stressed out” about it. They told him that Hamilton wanted to see him to issue discipline to him. Plaintiff did not want to see Hamilton. Plaintiff was “kind of stressed” and left the property. Exhibit 2, Halloran Dep. at 21. Plaintiff stated that the company was out to get him and treating him unfairly, “these audit scans.” Id. at 22. They discussed with Plaintiff seeing the union doctor and getting him disability insurance. Plaintiff said that he did not want to see the union doctor because he had his own doctor. Halloran told Plaintiff that maybe he should speak to his doctor if “you’re stressed like this.” Plaintiff said that he would take care of it himself, that he would talk to his doctor. Plaintiff said that he would be going out on FMLA or worker’s compensation. Id. at 22-24.

60. Halloran told Hamilton that Plaintiff was agitated and stressed and that he left the property. Halloran told Hamilton that Plaintiff was not interested in seeing the union doctor, that he had his own. Exhibit 2, Halloran Dep. at 25-26. Hamilton’s response was that he still needed to see Plaintiff to give him the warning letters. Id. Halloran told Hamilton that we would take care of it the next morning when Plaintiff punched in. Id. at 21.

Plaintiff is Terminated

61. On the morning of 7/25/03, Plaintiff was running late for work. As many other employees have done, Plaintiff drove his car up the ramp to the overhead door of the building, got out of his car, walked to the time clock, punched in, walked back to his car, backed down the ramp, parked his car in the auxiliary parking lot and walked back to the building. Exhibit 8, Plaintiff Dep. at 214-216.

62. It was common practice for employees, including Plaintiff, to pull their cars up and punch in like Plaintiff had done that day when they were running late for work. A half a dozen people would do that on any given day. Exhibit 8, Plaintiff Dep. at 216-218. They did this to punch in on time to avoid getting warning letters that were commonly distributed for being late. Id. at 216-217. The employees would pull up the ramp “three-quarters of the way up, halfway up, almost all the way.” Id. at 218.

63. Plaintiff reported to his workstation and worked for about an hour and a half. Then a casual employee approached Plaintiff and told Plaintiff that he was not going to do his route, that they wanted to see Plaintiff in the office. Exhibit 8, Plaintiff Dep. at 225. Plaintiff went to the office and had a meeting with Hamilton, Leveris and Halloran. Hamilton told Plaintiff that he was informed that Plaintiff had tried to run over a couple of his supervisors. Hamilton also said that his supervisor thought Plaintiff was going to shoot him. Id. at 227. He asked Plaintiff what was going on with him. Id. at 225-226. Plaintiff replied that the night before he was supposed to get his check for the missing days for the negative drug test and he was told that he couldn’t have the money until Hamilton disciplined him first. Plaintiff stated that he was very upset with that situation and left the building. Now he was being called in to be disciplined again. Id. Hamilton told Plaintiff that he had two warning letters to give him and that, if Plaintiff did not want to

cooperate, he was going to fire him. Hamilton had the two warning letters on the table and the termination letter in his hand, right in Plaintiff's "eyesight". Hamilton told Plaintiff that he was going to be discharged "for all the reasons that have led up to this incident" and that "he wasn't going to tolerate it anymore." *Id.* Leveris signed the termination letter and Hamilton handed it to Plaintiff. *Id.* at 229.

64. The termination letter received by Plaintiff is Exhibit 22. The written warning for threatening comments and intimidating looks is Exhibit 23. The written warning for missed scans is Exhibit 3.

65. Plaintiff states that "after the fact" Hamilton said something like "We can't help you anymore." Exhibit 8, Plaintiff Dep. at 227-228. Plaintiff said, "Joe, you're not a doctor. Okay?" "If you want to terminate me, I'm going to go right to my doctor and I'm going to explain the situation, what's going on here" "I can't handle this anymore, emotionally, physically, I'm done, I'm spent." *Id.* Plaintiff does not recall being offered medical help by Hamilton or the union. Plaintiff states that he was probably having a "breakdown" right there. Plaintiff does not recall what he said. Everything was blurry. *Id.* at 228-229.

66. Hamilton escorted Plaintiff to his car with "two other guys" and would not let even Plaintiff get his personal belongings from his truck. Exhibit 8, Plaintiff Dep. at 227. Plaintiff drove himself to the emergency room at Holy Family Hospital. Plaintiff wanted to be "admitted" somewhere. *Id.* at 228-229; Exhibit 24, Holy Family Hospital ER Record Dated 7/25/03.

67. Union Steward Gerry Halloran said that Plaintiff's termination on 7/25/03 came as a surprise. Hamilton and Leveris had told Halloran that Plaintiff was going to get two warning letters and that's what Halloran thought was going to happen. Exhibit 2, Halloran Dep. at 33-34 and 36-37. However, because Plaintiff had driven up the ramp that morning, they decided to

discharge him, “their mind was made up to discharge.” *Id.* at 33-34. Halloran does not recall any discussion at the termination meeting about Plaintiff trying to hit anyone or that anyone was in any danger by the manner in which Plaintiff drove up the ramp. *Id.* at 35-36. Halloran testified that if Plaintiff was considered a threat and dangerous, they would have discharged him immediately and called the police. Instead they let Plaintiff load his truck for 45 minutes. *Id.* at 35-36. Hamilton did tell Halloran that Plaintiff drove on the property recklessly and that they were afraid that Plaintiff was going to “do something violent.” *Id.* at 27.

68. Halloran recalled that Hamilton said at the termination meeting that Plaintiff should see a doctor. But Plaintiff “was already seeing a doctor, so, you know, nobody can make you change doctors.” Exhibit 2, Halloran Dep. at 36. Halloran thought that Plaintiff had a “stress, emotional, mental” problem and Halloran asked Hamilton and Leveris to put Plaintiff “out of service and let the doctors argue about it.” *Id.* at 33-34. Their reaction was that they were terminating Plaintiff for just cause for driving up on the property. *Id.*

69. Before Plaintiff was terminated, Plaintiff told Hamilton that he had his own doctor and that he would be going on FMLA for stress. Exhibit 2, Halloran Dep. at 59-60.

70. Halloran stated that the company had the option to put Plaintiff out of service and have him examined by doctors, “absolutely.” Exhibit 2, Halloran Dep. at 33-34. However, Hamilton and Leveris would not go that route because Plaintiff had driven up the ramp. *Id.*

71. Hamilton admitted that he had an option of placing Plaintiff on involuntary medical leave, but does not recall ever investigating or thinking of that. Exhibit 25, Hamilton Dep. at 112. Hamilton also acknowledged that generally he had to give a written warning to an employee before discharging the employee for certain conduct. However, Hamilton believes that

he did not have to give Plaintiff a written warning first because Plaintiff was a “real threat” and he needed Plaintiff “out of here.” *Id.* at 115-118.

72. Halloran stated that Plaintiff looked “disabled” beginning in June 2003. He “started acting funny,” “different” than he’d seen him before. He was acting in a “stressed” manner and “raising his voice” when disciplined. Exhibit 2, Halloran Dep. at 44-45.

73. Hamilton’s version of the termination meeting is set forth in Exhibit 21, Hamilton Memo Dated 7/25/03. Hamilton admits that his intention initially was to issue Plaintiff the two warning letters. However, based on the incident that morning, he told Halloran that “depending how the meeting went,” he was prepared to put Plaintiff out on termination. *Id.* Hamilton stated that Supervisor Greg Sweatt had reported to him that Plaintiff had driven his car onto the dock in a reckless manner and that “the only thing that went through his [Sweatt’s] mind was to hit the deck.” Sweatt said that Plaintiff got out of his car, ran to the clock and punched in. Then Plaintiff returned to his car and “peeled out in reverse.” *Id.* Hamilton states that he asked Plaintiff if he thought he needed medical help and that, if so, Hamilton would work with the company and the union to provide that help. Plaintiff’s response was that he “was here to receive discipline, so issue the discipline.” *Id.* First Plaintiff said that he was going to have his doctor write a note saying he was fine to come to work. Then Plaintiff said he “would be going on FMLA for stress.” Hamilton told Plaintiff that based on his actions that morning driving his car in the building in a reckless manner, Hamilton was classifying that as “threatening gesture” and terminating him for cause. *Id.*

74. Leveris set forth his version of the termination meeting in Defendants’ Exhibit 10 to Hamilton Aff., Leveris Memo Dated 7/25/03. Leveris states that the first question Hamilton asked Plaintiff was “Can we help you?” Plaintiff replied, “If you have a discipline letter to issue

me give it to me now.” Hamilton answered, “ Paul, can we help you ... yes or no?” Plaintiff again answered, “Give me the discipline letters now.” Id. Plaintiff “also stated he was going out on FML [sic] due to stress and anxiety relating to the disciplinary actions he received.” Plaintiff also stated, “he was filing for both FML and Worker’s Compensation.” Leveris does not remember whether it was before or after the termination that Plaintiff stated that. Exhibit 12, Leveris Dep. at 43-44. During the meeting, Hamilton brought up the fact that “we were not doctors, but we do believe Paul needs help.” Leveris wrote, “I think this is an important statement to add to this letter.” Id. Leveris said that it was obvious that “something wasn’t right” with Plaintiff. Exhibit 12, Leveris Dep. at 44-45.

Pretext in the Stated Reason for Termination

75. Plaintiff denied that he drove up the ramp at a high rate of speed. Plaintiff states that Leveris “fabricated” needing to “duck out of the way.” Plaintiff said that there were employees congregating at the overhead door near the ramp, having coffee and doughnuts. Exhibit 8, Plaintiff Dep. at 212. Plaintiff never even saw Leveris or Sweatt in that area. Id. at 222-223. Plaintiff denies that he drove onto the dock at a high rate of speed or that he peeled in reverse. Defendants’ Exhibit 4 to Perlman Aff., Plaintiff’s Ans. to Int. 5. Plaintiff just pulled his car up the ramp and stopped either “slightly under” or “slightly over” the interior of the building. Exhibit 8, Plaintiff Dep. at 216.

76. James Sambataro, a fellow driver of Plaintiff, was near the time clock at the time of this incident. He testified that he was talking with other drivers and had his back to the ramp, which was about 40 feet away. He heard a car come up and there was a “lot of commotion,” “laughing” “boisterous laughing” from other drivers in the area. Exhibit 5, Sambataro Dep. at 33-39. Sambataro said that the laughter was because Plaintiff had driven his car in. Sambataro

thought it was funny too. *Id.* at 39. He did not see Plaintiff actually drive in, but he heard the sound of Plaintiff's foreign car. From the sound of the motor, Plaintiff had not driven in there fast. Sambataro had seen "pissed off" drivers "barrel-assing" in there with their trucks faster than Plaintiff had done that day. *Id.* at 34-35.

77. Sambataro testified that he later learned that this incident was "embellished" and that Leveris claimed that Plaintiff had tried to run him over, but that Sambataro "doesn't buy that." *Id.* at 35-36. Plaintiff wasn't going to run anybody over. *Id.* at 34. Sambataro testified that he saw Leveris yelling at Plaintiff after he drove in. *Id.* at 34-36. Leveris did not look "frightened." He looked "pissed off" with "flared" nostrils. Leveris "always looked like that" "His nostrils were always flared, he looked like he was mad at the world all the time." *Id.* at 37.

78. There was nothing threatening or alarming about Plaintiff at the time of this incident. Exhibit 5, Sambataro Dep. at 43. Sambataro also recalls that Greg Sweatt was there. He thought that Sweatt was with him near the time clock. *Id.* at 37-38. Sweatt did not look scared or frightened and there was no interaction between Plaintiff and Sweatt at the time. *Id.* Sambataro states that none of the supervisors either ever looked afraid or ever said that they were afraid of Plaintiff. *Id.* at 38.

79. James O'Brien, a fellow driver of Plaintiff, testified that there was a practice for drivers who were late to drive up to the building and punch in before parking their cars. The reason for that was that the company was then disciplining the drivers for being even a minute late. Exhibit 4, O'Brien Dep. at 38-40. O'Brien drove up like that himself and saw other drivers do it. Depending on how late they were, the drivers would stop outside and run up the ramp or drive up the top of the ramp ramp or right into the building. *Id.* at 39 and 47.

80. Sambataro similarly testified regarding the practice of drivers running late and driving up to punch in. “Happens every day.” They would drive up the ramp and park near the overhead door and punch in. Exhibit 5, Sambataro Dep. at 32-33. You weren’t supposed to do that, but it was not enforced, no one was written up for it. Id.

81. Supervisor Chris Demmons testified that he was a witness to Plaintiff’s “ramp” incident. Demmons said that when Plaintiff pulled in, he was going a “good ten miles plus” an hour over the usual speed of “under five” miles an hour in that area. Exhibit 26, Demmons Dep. at 65. Demmons said that Plaintiff got out of his car, punched in, got in his car and drove out. Id. Demmons agreed that there was a practice for drivers running late to drive up and punch in, but states that the drivers do not drive up the ramp, but park outside and walk in. Id. at 66-67.

82. Supervisor Greg Sweatt testified that he was a witness to Plaintiff’s “ramp” incident. Sweatt said that Plaintiff pulled into the building “going pretty fast,” faster than Sweatt would have driven. Sweatt could not estimate Plaintiff’s speed. Exhibit 27, Sweatt Dep. at 72-73. Plaintiff then jumped out of his car, punched in, went back to his car and backed out “kind of fast.” Id. at 74. Sweatt admitted that there was a practice for drivers running late to drive up and punch in, but states that he does remember them driving into the building. He’s seen them park on the ramp and punch in. Id. at 79-80.

83. Leveris stated that Plaintiff punched in and “sped off in reverse.” He is not “100%” sure that Plaintiff “peeled out.” Exhibit 12, Leveris Dep. at 26.

Plaintiff Denies Making Threatening Remarks or Gestures

84. Plaintiff denies making the threatening remarks and gestures attributed to him by Defendants. He denies telling supervisors that he would catch the persons doing things to him, or that somebody was “fucking around” with him or that he’d “fix him” or “get” him. Exhibit 8,

Plaintiff Dep. at 159-164. Plaintiff doesn't recall telling Demmons that he was "being followed daily," but Plaintiff believes that he was being followed and was afraid that someone would steal a package out of his truck. *Id.* Plaintiff believed that someone was stealing his freight and that the company records supported his suspicions. *Id.* at 165-169.

85. Plaintiff denies that he told Hamilton and Leveris, "you will get yours" or "that I can go to bed at night without worrying." Exhibit 8, Plaintiff Dep. at 172-173. Plaintiff testified that he was not a "mean person" and would never say that. However, Plaintiff states that he had bipolar disorder and was in such a state of anxiety and depression that "if I did say it, I can't recall it. *Id.* Plaintiff admits that if was "speaking a bit loud" when being taken for a drug and alcohol test against his will, it could have been due to his bipolar disorder. *Id.* at 174.

86. Plaintiff denies telling the supervisors things like "wait 'til I get him," "you'll get yours" or "who is screwing with me." Plaintiff says that was all "fabrication." Exhibit 8, Plaintiff Dep. at 185-186. Plaintiff denies staring at Hamilton during the video presentation. *Id.* at 203-204. Plaintiff denies telling Trudeau that his kids would have to get used to visiting him in jail or that he (Plaintiff) had seen someone hang himself and was not afraid to die. *Id.* at 206-207. Plaintiff denies making any statements to supervisors that were either threats or that could be interpreted as threats. *Id.* at 208.

Plaintiff's Bipolar Disorder

87. Plaintiff's mother and brother had bipolar disorder. Plaintiff's mother committed suicide in 1987 from the disease and his brother "died" from it. Exhibit 8, Plaintiff Dep. at 34-35. Plaintiff himself "waited forever" to get treatment and "fought off taking meds" all his life because he saw what his mother went through. *Id.* at 40.

88. Plaintiff was not actually diagnosed with bipolar disorder until late 2005, when his psychiatrist, Dr. Sadowsky, made that diagnosis and began prescribing him medications for it. Exhibit 8, Plaintiff Dep. at 37-41. Prior to that, he had been diagnosed with depression, anxiety, inability to cope, lack of concentration and sleep apnea. Plaintiff had been prescribed different antidepressants as well as different drugs for sleep apnea by his primary care physician. *Id.* and 279. Plaintiff, however, believes that he has had bipolar disorder for 14 years, and has no doubt that he had bipolar disorder in 2002. *Id.* at 40-42.

89. Plaintiff describes the manic and depressive states of his bipolar disorder as follows. In his depressive state, he would “go hide”, not wanting to go out of the house or interact with people or his family. In his manic state, he would “speed” in his brain and be agitated, confused and be unable to focus. He would be very “irritable.” Exhibit 8, Plaintiff Dep. at 42-45.

90. Plaintiff states that the effects of his bipolar disorder are lack of concentration, inability to cope, anxiety and inability to sleep. Exhibit 8, Plaintiff Dep. at 276-277. Plaintiff had these symptoms in July 2003. *Id.* at 293-294. Plaintiff had an inability to cope in “certain situations” that arose, but he tried to do so as best he could. *Id.* Plaintiff’s bipolar disorder sometimes prevented him from remembering what freight he scanned or remembering to scan his gas card before he left the building. *Id.* at 278-279.

91. Plaintiff states that he had asked for an accommodation for his disability when he went on FMLA in October 2002. However, Plaintiff states that, in July 2003, he wasn’t given the opportunity to ask for an accommodation. He was “fired.” Exhibit 8, Plaintiff Dep. at 294-295. Plaintiff states that the accommodation he needed was going back on short-term disability. Plaintiff does not know how long he would have needed to be out. *Id.*

92. Dr. Claudia Trombly has been Plaintiff's primary care physician since 6/13/03. Exhibit 28, Dr. Trombly Dep. at 6-7. Plaintiff had been initially diagnosed with depression and anxiety. It was not until the fall of 2005 that Plaintiff was diagnosed with bipolar disorder and was put on the medications for that condition. Id. at 58-59.

93. Dr. Twombly stated that the symptoms of bipolar disorder include paranoia, mood swings, emotional outbursts, grandiose thoughts, difficulty with concentration and impulsive behavior. Exhibit 28, Dr. Trombly Dep. at 65-67. In a manic state, the people think they are the center of the universe and everyone is against them or for them, one or the other. Id. at 66. People with bipolar disorder may have it as an underlying condition that is aggravated or exacerbated by situations or events, thereby bringing out the symptoms. Id. at 68-69. In Plaintiff's case, his depression reportedly started with problems at work, "unfounded accusations" and so forth. Such things could have aggravated bipolar disorder. Id.

94. Dr. Twombly first suspected that Plaintiff had bipolar disorder in April 2005, when it was reported that Plaintiff was saying that people were trying to kill him and he always had to keep "an extra eye out." At the same time, Plaintiff said that he felt he had "a good handle on things." The doctor said that was the "tip off," that he had that paranoia and yet felt he had a handle on things. That "is pretty classic bipolar." Exhibit 28, Dr. Trombly Dep. at 72-73. The doctor agrees that Plaintiff had not been diagnosed with bipolar in 2003, but that is a very difficult diagnosis to make. "You can't make it until someone goes manic or off the deep end. Id. at 62-63. Plaintiff's fear of going out, paranoid that he could not leave the house, showed a worsening of his condition. Id. at 60.

95. Plaintiff's psychiatrist, Dr. Marc Sadowsky, testified that Plaintiff was diagnosed by him with bipolar disorder in the fall of 2005, shortly after first seeing him. Exhibit 29, Dr. Sadowsky

Dep. at 61-62. The reported symptoms that led to that diagnosis were mood swings, irritability, racing thoughts, episodes of euphoria, rapid loud speech and the worsening of Plaintiff's symptoms on anti-depressant medication. Id. at 62-63. Other symptoms of bi-polar disorder are paranoia, impaired judgment and impulsive behavior. Id. at 63-64. People with bipolar tend to seek treatment when they are depressed, since, when they are manic, they generally "feel really good" and so deny that there is anything wrong with them. Id. at 69-70.

96. Dr. Sadowsky testified that if Plaintiff had emotional outbursts at work, was yelling at supervisors, making threats, claimed he was being persecuted, claimed that there was a conspiracy against him, and had trouble scanning freight and doing simple tasks – that conduct would be consistent with bipolar disorder. Id. The doctor stated that he would not be surprised that Plaintiff had bipolar in 2003. Exhibit 29, Dr. Sadowsky Dep. at 72.

97. People that develop bipolar disorder have a predisposition to it. Traumatic or stressful events may precipitate it. Exhibit 29, Dr. Sadowsky Dep. at 76-77. Plaintiff's work stressors or his treatment at work would not have caused his bipolar disorder, but clearly it exacerbated things for him. Id. at 78-79.

98. Dr. Sadowsky testified that if Plaintiff had not been fired, but instead had been put out on involuntary medical leave with the opportunity for treatment, there is clearly a possibility that that would have been helpful to Plaintiff. Exhibit 29, Dr. Sadowsky Dep. at 74. The treatment would be medications and psychotherapy. Plaintiff has had improvement with the medications prescribed or him by Dr. Sadowsky and Plaintiff's prognosis would be between guarded and good, depending largely on Plaintiff following through on treatment recommendations. Id. at 76.

Respectfully Submitted,

PAUL PIZZUTO,

By his attorney,

/s/ Richard A. Mulhearn

Richard A. Mulhearn

BBO #: 359680

Law Office of Richard A. Mulhearn, P.C.

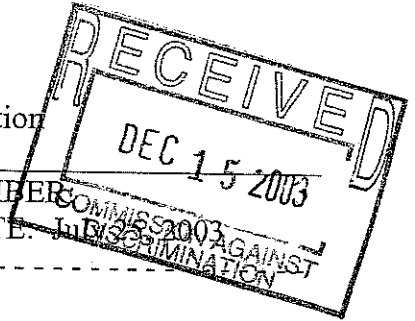
41 Elm Street

Worcester, MA 01609

Tel: (508) 753-9999

Dated: November 12, 2007.

Commonwealth of Massachusetts
Massachusetts Commission Against Discrimination



DOCKET NUMBER:
FILING DATE:

EEOC/HUD NUMBER
VIOLATION DATE: JUL 30 2003

Name of Aggrieved Person or Organization:

Paul Pizzuto
59 Rollins St.
Lawrence, MA 01841
(978) 685-9005

Named is the employer, labor organization, employment agency, or state/local government agency who discriminated against me:

Airborne Express
200 Fallon Road
Stoneham, MA 02180

1-800-221-2676

Telephone Number:

No. of Employees: 100+

Named is the employer, labor organization, employment agency, or state/local government agency who discriminated against me:

Steven Crossken
c/o Airborne Express
200 Fallon Road
Stoneham, MA 02180

Telephone Number:

No. of Employees: n/a

Named is the employer, labor organization, employment agency, or state/local government agency who discriminated against me:

Joseph Hamilton
c/o Airborne Express
200 Fallon Road
Stoneham, MA 02180

Telephone Number:

No. of Employees: n/a

Named is the employer, labor organization, employment agency, or state/local government agency who discriminated against me:

Greg Sweatt
c/o Airborne Express
200 Fallon Road
Stoneham, MA 02180

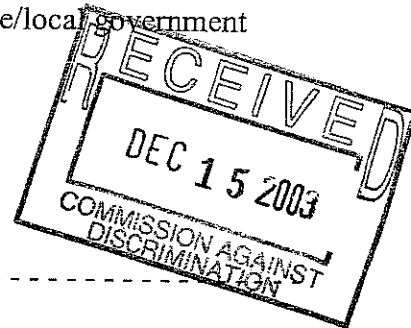
Telephone Number:

No. of Employees: n/a

Named is the employer, labor organization, employment agency, or state/local government agency who discriminated against me:

Arthur Leveris
c/o Airborne Express
200 Fallon Road
Stoneham, MA 02180
Telephone Number:

No. of Employees: n/a



Cause of Discrimination based on:

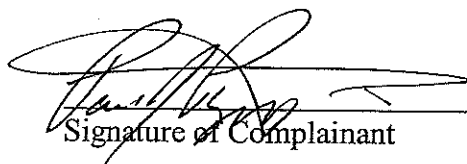
Disability
Perceived disability
Retaliation

The particulars are:

SEE ATTACHED SCHEDULE

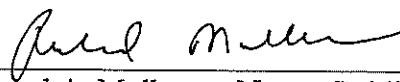
(X) I ALSO WANT THIS CHARGE FILED WITH THE EEOC.

DATE: December 12, 2003



Signature of Complainant

SWORN TO AND SUBSCRIBED BEFORE ME THIS 12th DAY OF DECEMBER 2003.



Richard A. Mulhearn, Notary Public
My Commission Expires: 01/29/10

SCHEDULE TO CHARGE OF DISCRIMINATION OF
PAUL PIZZUTO

1. I was employed as a trucker by Respondent Airborne Express ("Airborne") beginning on or about March 2, 1990 until my termination from employment on July 25, 2003. I worked for Airborne for more than 13 years.
2. Respondent Steven Crossken ("Crossken") was at times material Airborne's District Field Services Manager at my facility and a supervisor over me.
3. Respondent Joseph Hamilton ("Hamilton") was at times material Airborne's District Field Services Manager at my facility and a supervisor over me. Hamilton succeeded Crossken in that position in or about March 2003.
4. Respondent Greg Sweatt ("Sweatt") was at times material was a supervisor of Airborne at my facility.
5. Respondent Arthur Leveris ("Leveris") was at times material was a supervisor of Airborne at my facility.
6. As of 3/13/02, I was an employee in good standing at Airborne with no outstanding warnings or disciplinary actions.
7. On 3/13/02, I suffered a work-related injury to my right calf. The injury was duly reported to Airborne that day. I did not seek medical attention initially and I continued to work following the injury. However, I continued to have pain from the injury.
8. On or about 4/16/02, I sought medical attention due to worsening symptoms. I was diagnosed with a medial gastroc tear of the right calf. I was referred to physical therapy and prescribed Vioxx for pain.
9. I was out of work from approximately April 15, 2002 until April 29, 2002 from this work injury and then returned to work on a light duty basis. I received worker's compensation benefits for this period.
10. Airborne is self insured for worker compensation purposes. Airborne makes ultimate decisions with regard to the payment of benefits and is financially responsible for the full cost of benefits paid.
11. Airborne is a union shop. The collective bargaining representative is Teamsters Local 25.

12. Shortly after my work injury, I began to receive written warnings for various alleged infractions. I received a warning for tardiness on 4/2/03 for tardiness dating back to 1/8/02. On 4/4/02, I received a warning for "careless and neglectful performance of duties" for failing to turn in a gas card. On 4/5/02, I received a warning for job misconduct for alleged "grandstanding" on 4/4/02 when I protested the prior disciplinary actions and for inappropriate conduct on 4/5/02 for making bird and other noises.
13. I believe that these disciplinary actions were discriminatory and/or retaliatory and were issued because of my work injury. The issuance of these multiple warnings represented disparate treatment on account of my work injury.
13. On approximately 4/29/02, I returned to work with restrictions under Airborne's light duty program, which it calls the Early Return to Work Program (ERTW Program).
14. On 5/24/02, I was discharged from employment by Respondent Crossken for what he stated was "the cardinal offense of dishonesty – theft of company time."
15. The basis for my discharge was that I had fallen asleep on company property during work hours while on light duty. I had fallen asleep due to a combination of the medications I was taking for my work injury and sleep apnea from which I suffer.
16. I believe that my discharge was discriminatory and/or retaliatory and was done because of my work injury. My discharge represented disparate treatment on account of my work injury.
17. I grieved the discharge through the union. A grievance meeting was held between the union and Airborne management on 6/3/02. The result of the grievance meeting was that the discharge was reduced to a two-day suspension. I was told to report to work on the following day, 6/4/02.
18. When I reported to work as instructed on 6/4/02, Respondent Crossken told me that I was still fired until he spoke to his Regional Manager. I was not allowed to work.
19. Later that day, I was called by the union steward and was told to report to work on 6/5/02.
20. On or about 6/7/02, I was released by my doctor to full duty. I worked at my regular job from approximately 6/7/02 to 10/14/02.
21. On 7/10/02, I made a harassment complaint to the union against Crossken with regard to my discharge and his ongoing discrimination and retaliation against me. My harassment complaint detailed his actions in terminating me, refusing to allow me to return to work on 6/5/02 as agreed, interfering with my receipt of proper pay and/or worker's compensation benefits for time lost due to my discharge and telling me on 7/3/02 to remove a shirt that had Airborne's logo because it was not a shirt issued by the company.

21. During the period from 6/7/02 to 10/14/02, Crossken continued to harass me (as indicated above) and to attempt to make my daily workday difficult. In addition, he resumed issuing me disciplinary actions. On 8/8/02, I received a written warning for insubordination. On 9/26/02, I received two suspension notices for insubordination.
22. I believe that these disciplinary actions and harassment were discriminatory and/or retaliatory and were issued because of my work injury. The issuance of these disciplinary actions and the ongoing harassment represented disparate treatment on account of my work injury and retaliation based on my protesting and/or opposing this discrimination.
23. The discrimination and retaliation took a tremendous toll on my physical and emotional health. On 10/14/03, my doctor took me out of work. The diagnoses were insomnia, sleep apnea, acid reflux, tremor, poor concentration and anxiety.
24. I was out of work from 10/14/02 to 2/24/03 for these conditions.
25. I filed for worker's compensation benefits for this period of disability. The claim was denied by Airborne. Litigation concerning this claim is still pending before the Department of Industrial Accidents.
26. I did receive short-term disability benefits and FMLA leave for this period of disability.
27. When I returned to work on approximately 2/24/03, Crossken continued to harass me and to attempt to make my daily workday as difficult as possible. However, I tried to avoid interaction with him as much as possible.
28. In or about mid-March 2003, Crossken was transferred to a different Airborne facility. Respondent Hamilton replaced Crossken as District Field Services Manager at my facility.
29. Subsequently, Hamilton had a long discussion with me. Hamilton told me that Crossken had left him information that I was a troublesome employee. I did my best to explain my side of things to Hamilton. I thought that we had a meeting of the minds.
30. Things went well for several months. Then, packages began to disappear from my truck. I spoke to Hamilton about this. Hamilton told me that I was imagining that packages were missing. However, it was showing on the computer that they were missing.
31. 7/16/03, Respondents Hamilton and Leveris called me into the office. Hamilton told me that I was suffering from paranoia and that I was threatening supervisors with gestures and looks.
32. Hamilton sent me that day to a lab for drug and alcohol testing. The results were negative. I then went back to work.
33. From 7/21/03-7/25/03, I still suspected that packages were being taken from my truck. The computer appeared to support my suspicion. I discussed this with Hamilton.

45. I am a qualified handicapped person within the meaning of M.G.L. c. 151B.
46. Rather than accommodate my work related disability, Airborne harassed me and terminated me instead.
47. I believe that I have been replaced by a non-handicapped person.
48. I believe that Respondents have discriminated me against because of my disability, record of a disability and/or perceived disability in violation of M.G.L. c. 151B, §4(16).
49. I believe that Respondents have retaliated against because of opposition to their discriminatory practices of M.G.L. c. 151B, §4(4).
50. I believe that Respondents Crossken, Hamilton, Sweatt and Leveris also violated M.G.L. c. 151B, §4(4A) (intimidation and interference) and M.G.L. c. 151B, §4(5)(aiding and abetting).
51. As a result of Respondents' conduct, I have suffered emotional distress and financial losses.

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<p>Volume I Pages 1-82 UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS</p> <p>Docket No. 04-12492-GAO</p> <p>PAUL PIZZUTO, Plaintiff, vs.</p> <p>AIRBORNE EXPRESS, INC., STEVEN CROSSKEN, JOSEPH HAMILTON, GREG SWEATT and ARTHUR LEVERIS, Defendants.</p> <p>DEPOSITION OF GERALD HALLORAN, called as a witness by counsel for the Plaintiff, pursuant to the applicable provisions of the Federal Rules of Civil Procedure, before Jennifer A. Doherty, CSR No. 1398F95 and Notary Public in and for the Commonwealth of Massachusetts, taken at the offices of Richard A. Mulhearn, 41 Elm Street, Worcester, Massachusetts on Thursday, June 14, 2007 commencing at 3:06 p.m.</p> <p>*****</p> <p>FLYNN REPORTING ASSOCIATES Professional Court Reporters One Exchange Place Worcester, Massachusetts 01608 (508) 755-1303 * (617) 536-2727 TOLL FREE: (888) 244-8858 FAX: (508) 752-4611</p>	<p>1</p> <p>2 INDEX</p> <p>3 Testimony of: Direct Cross Redirect Recross</p> <p>4 GERALD HALLORAN</p> <p>5 by Mr. Mulhearn 4</p> <p>6 by Mr. Perlman 39</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2 BY: Richard Mulhearn, Esq.</p> <p>3 41 Elm Street</p> <p>4 Worcester, Massachusetts 01609</p> <p>5 For the Plaintiff.</p> <p>6</p> <p>7 SULLIVAN, WEINSTEIN & McQUAY, P.C.</p> <p>8 BY: C. Max Perlman, Esq.</p> <p>9 2 Park Plaza</p> <p>10 Boston, Massachusetts 02116</p> <p>11 617-348-4300</p> <p>12 max@swmlawyers.com</p> <p>13 For the Defendants.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>Exhibit 2</p>	<p>1 PROCEEDINGS</p> <p>2 STIPULATIONS</p> <p>3 It is stipulated by and between counsel</p> <p>4 for the respective parties that the deposition</p> <p>5 transcript will be read and signed by the</p> <p>6 deponent within thirty (30) days of receipt of</p> <p>7 transcript under the pains and penalties of</p> <p>8 perjury. The filing and the notarization are</p> <p>9 hereby waived.</p> <p>10 GERALD J. HALLORAN, having been</p> <p>11 satisfactorily identified and duly sworn by the</p> <p>12 Notary Public was examined and testified as</p> <p>13 follows:</p> <p>14 DIRECT EXAMINATION</p> <p>15 BY MR. MULHEARN:</p> <p>16 Q. State your full name for the record,</p> <p>17 please.</p> <p>18 A. Gerald John Halloran.</p> <p>19 Q. And spell your last name, please.</p> <p>20 A. H-A-L-L-O-R-A-N.</p> <p>21 Q. Where do you live?</p> <p>22 A. I live at 14 East Eglin Boulevard in</p> <p>23 Londonderry, New Hampshire.</p> <p>24 Q. Do you have any plans on moving from</p>

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1 there in the next year or so?

2 **A. Not within the next year, no.**

3 Q. Are you currently employed?

4 **A. No.**

5 Q. Who is your last employer?

6 **A. DHL.**

7 Q. How long did you work for DHL?

8 **A. I worked for DHL and their subsidiary,**

9 **Airborne Express, for 29 years.**

10 Q. What was your position at -- we'll call

11 it Airborne, I'll combine them.

12 **A. Courier.**

13 Q. Is that the same as a driver?

14 **A. Yes.**

15 Q. Did you work at more than one

16 facility?

17 **A. Yes.**

18 Q. Did you also work out of the Stoneham

19 facility?

20 **A. Yes.**

21 Q. Is it Stoneham?

22 **A. Stoneham. It doesn't really matter.**

23 Q. Can you tell me approximately the year

24 you worked out of Stoneham?

Page 6

1 **A. I would say Stoneham -- I worked there,**

2 **I would say it was 1999 to 2005.**

3 Q. Directing your attention to the years

4 2002, 2003, you were working there then?

5 **A. Yes.**

6 Q. Who were the station managers during

7 that period of time?

8 **A. Crossken, Joe Hamilton comes to mind --**

9 **in the five-year period there was eight or nine**

10 **of them. Hamilton, I believe, the other one was**

11 **Crossken.**

12 Q. Did you also hold any union office

13 while you worked at Airborne?

14 **A. Yes, I was the chief steward and --**

15 **steward for approximately 20 years. Steward and**

16 **chief steward, chief steward is a steward but**

17 **he's a chief steward.**

18 Q. You were a steward but also at times

19 you were the chief steward?

20 **A. Yes.**

21 Q. In the year 2002, 2003, if you

22 remember, were you chief steward or steward?

23 **A. I was acting steward. The steward was**

24 **called up by the National Guard, they asked me to**

Page 7

1 **cover.**

2 Q. Was that David Valone (phonetic)?

3 **A. Yes.**

4 Q. What was your job as acting steward?

5 **A. Present grievances, be witness to**

6 **disciplinary actions. That's about it.**

7 Q. Can you describe the work environment

8 there at the Stoneham site in 2002, 2003 as far

9 as management and drivers?

10 **MR. PERLMAN: Objection.**

11 **A. Very fast paced, going through a**

12 **transition with a new merging company, a lot of**

13 **friction, a lot of stress.**

14 Q. What kind of friction do you

15 remember?

16 **A. Problems over productivity, the**

17 **scanning procedures, absenteeism.**

18 Q. And when you say "friction," what do

19 you mean?

20 **A. Like the kitchen is hot, you're always**

21 **waiting to get it -- you're always waiting to get**

22 **accused of something wrong.**

23 Q. What was it about the scanning

24 procedure that led to that?

Page 8

1 **A. They started to be very strick on their**

2 **out-of-delivery scans and they you would leave in**

3 **the morning and you would scan each package which**

4 **you would scan on the hand-held computer, loading**

5 **on the truck then -- to me, they did because I**

6 **wouldn't leave the building until -- but other**

7 **people would leave. Then you come in in the**

8 **afternoon and some people tell you you were off,**

9 **you didn't scan.**

10 Q. And you acted differently at that

11 time?

12 **A. Myself, personally?**

13 Q. Yes.

14 **A. Yes, I wouldn't leave the building**

15 **until they tell me I was short.**

16 Q. How would someone know whether you were

17 short or not?

18 **A. They would download that scanner, the**

19 **supervisor would download his scanner then I**

20 **would download my scanner, and it would show**

21 **up -- print a report immediately.**

22 Q. By comparing the two reports, you could

23 tell who was off?

24 **A. Yes. That could be done immediately.**

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<p>1 I don't know if anybody else did it but I always</p> <p>2 did it because I didn't want to be on the road</p> <p>3 all day -- if I have a problem discrepancy --</p> <p>4 Q. Where the supervisor would have scanned</p> <p>5 items, was that during some sort of special</p> <p>6 procedure or was that every day?</p> <p>7 A. They did different drivers every day.</p> <p>8 Q. Are you referring to an audit scan?</p> <p>9 A. Yes.</p> <p>10 Q. You're saying when this was an audit</p> <p>11 scan you would make sure everything was okay</p> <p>12 before you left?</p> <p>13 A. I would.</p> <p>14 Q. How often were trucks audit scanned</p> <p>15 during than time?</p> <p>16 A. I would say some of them were scanned,</p> <p>17 depending who they picked, every day they scanned</p> <p>18 somebody, they had to, but two or three a day</p> <p>19 maybe.</p> <p>20 Q. Were those audit scans, were they</p> <p>21 random?</p> <p>22 A. I would say they were targeted.</p> <p>23 Q. Describe that answer, explain that.</p> <p>24 A. Random would be if it was computer</p>	<p>1 pieces they said he was off.</p> <p>2 Q. Do you remember, was it the post</p> <p>3 office?</p> <p>4 A. Yes.</p> <p>5 Q. Was there something about the post</p> <p>6 office that was generally a problem or just for</p> <p>7 him?</p> <p>8 MR. PERLMAN: Objection.</p> <p>9 A. It was a problem for everybody. The</p> <p>10 problem being it was a lot of volume, a lot of</p> <p>11 packages, and the decision sometime was made late</p> <p>12 in the breakdown to take it out. Another problem</p> <p>13 I encountered with the post office is it had five</p> <p>14 or six different bar codes on the box, a lot of</p> <p>15 DHL's packages as they were merging all different</p> <p>16 companies together, when you're in a hurry you</p> <p>17 scan one, then you scan the wrong one, your</p> <p>18 supervisor would scan the right code, you'd still</p> <p>19 be in trouble. Hey, you got to fix this bar</p> <p>20 code. No, it scanned the right one. I'm suppose</p> <p>21 to take the package like this -- let it -- it was</p> <p>22 a problem, a very high pressure thing that</p> <p>23 delivery scan.</p> <p>24 Q. Do you remember Mr. Pizzuto getting</p>
Page 10	Page 12
<p>1 generated, the computer told you to scan Route</p> <p>2 42, that would be random, or if you put the truck</p> <p>3 members in a box, they scan -- they scanned them</p> <p>4 who they wanted to scan.</p> <p>5 Q. Were some people scanned more than</p> <p>6 others?</p> <p>7 A. Yes, certainly.</p> <p>8 Q. Was Paul Pizzuto one of those people?</p> <p>9 A. The week that I had problems with him</p> <p>10 he was scanning probably a lot more than usual,</p> <p>11 four times in a week which is kind of high.</p> <p>12 Q. You prefaced that by something like the</p> <p>13 week that you were having problems with him, what</p> <p>14 do you mean?</p> <p>15 A. The week that he was discharged,</p> <p>16 according to my notes that I read, the week --</p> <p>17 the two weeks previous to his discharge, part of</p> <p>18 the problem was this audit scan, particularly</p> <p>19 post office.</p> <p>20 Q. When you say one of the problems, you</p> <p>21 mean something he's being given discipline over</p> <p>22 it?</p> <p>23 A. Yes, I believe he got a warning letter</p> <p>24 for audit scan, I believe it was three or four</p>	<p>1 some sort of discipline over that issue during</p> <p>2 the last week?</p> <p>3 A. Yes, I believe the issue -- the letter</p> <p>4 the day he was discharged for it. They were</p> <p>5 going to issue it before he was discharged in</p> <p>6 June, and like I said, as acting steward, I</p> <p>7 wouldn't have kept the file at that time, so I'm</p> <p>8 sure there were other letters before that.</p> <p>9 Q. Do you recall that last week of Mr.</p> <p>10 Pizzuto's employment?</p> <p>11 A. Yes.</p> <p>12 Q. Were you aware that he was sent for a</p> <p>13 reasonable suspicion drug and alcohol test?</p> <p>14 A. I became aware of it after the fact,</p> <p>15 yes.</p> <p>16 Q. How did you become aware of it?</p> <p>17 A. Through management, probably a</p> <p>18 supervisor or everybody knew at the time they</p> <p>19 took Paul for a drug test, everybody in the</p> <p>20 building knew. I become aware of it. I wasn't</p> <p>21 present for the drug test.</p> <p>22 Q. Was there any reason why you were not</p> <p>23 present?</p> <p>24 A. I believe I was on vacation that week,</p>

<p style="text-align: right;">Page 13</p> <p>1 or I was out that day because I would have</p> <p>2 definitely been part of it.</p> <p>3 Q. Was this reasonable suspicion test, is</p> <p>4 this something covered by the contract?</p> <p>5 A. It is probable suspicion.</p> <p>6 Q. All right.</p> <p>7 A. Yes, it is covered.</p> <p>8 Q. And during the time that you worked at</p> <p>9 Airborne/DHL how many times has somebody been</p> <p>10 sent for a probable suspicion drug or alcohol</p> <p>11 test?</p> <p>12 MR. PERLMAN: Objection.</p> <p>13 A. I believe he was only second one. I</p> <p>14 believe there was only one for alcohol.</p> <p>15 Q. Do you remember the circumstance for</p> <p>16 that one for alcohol?</p> <p>17 A. I believe the person was slurring</p> <p>18 speech and he smelt heavily of alcohol.</p> <p>19 Q. Two tests in how many years?</p> <p>20 A. Since the government instituted the</p> <p>21 testing and I really can't give you that, because</p> <p>22 the testing was mandatory -- the random ones,</p> <p>23 there is three type of post testing. When CDL</p> <p>24 come in existence, maybe 1990.</p>	<p style="text-align: right;">Page 15</p> <p>1 of your next check, depending on how it fell if</p> <p>2 you lost Thursday and Friday you would get the</p> <p>3 following Thursday. If you lost Thursday, Friday</p> <p>4 and Monday you get it two days the next week, the</p> <p>5 day you lost within the payroll period.</p> <p>6 Q. During that pay period, was payroll on</p> <p>7 Thursday?</p> <p>8 A. Yes.</p> <p>9 Q. Do you know how the payroll checks</p> <p>10 would arrive at the facility?</p> <p>11 A. Yes, they come in company bag from our</p> <p>12 own aircraft, DHL.</p> <p>13 Q. From out of state?</p> <p>14 A. Yes, Seattle, Washington, I think they</p> <p>15 were coming out of at that time, if not they were</p> <p>16 coming out of Florida.</p> <p>17 Q. And for a worker under those</p> <p>18 circumstances that was sent for that drug test</p> <p>19 and passed it, would they have to file a</p> <p>20 grievance to get paid?</p> <p>21 A. Normally not, no.</p> <p>22 Q. Do you remember the situation with Paul</p> <p>23 Pizzuto about him getting paid for the time lost</p> <p>24 due to the drug test?</p>
<p style="text-align: right;">Page 14</p> <p>1 Q. From 1990 until you stopped working?</p> <p>2 A. Yes.</p> <p>3 Q. Two tests?</p> <p>4 A. Yes, for that, two tests for random.</p> <p>5 Q. Specifically, probable suspicion?</p> <p>6 A. Right.</p> <p>7 Q. What happens if management wants you to</p> <p>8 take a probable suspicion test, could that be</p> <p>9 forced on you or is that voluntarily?</p> <p>10 MR. PERLMAN: Objection.</p> <p>11 A. It is voluntarily, but you can be</p> <p>12 discharged if you refuse.</p> <p>13 Q. Were you consulted at all by Mr.</p> <p>14 Pizzuto about whether he should --</p> <p>15 A. I was not, on that day, no.</p> <p>16 Q. Under the contract, if somebody was to</p> <p>17 be sent for a probable suspicion drug test and</p> <p>18 were to pass the test, but lost time in the</p> <p>19 meantime, what was suppose to happen?</p> <p>20 A. He would be paid for his time out,</p> <p>21 any time he lost including overtime.</p> <p>22 Q. Was there any timing on when that</p> <p>23 payment had to be made to him?</p> <p>24 A. Yes, usually you get it when you -- end</p>	<p style="text-align: right;">Page 16</p> <p>1 A. Yes.</p> <p>2 Q. What do you remember about that?</p> <p>3 A. I remember that we were in a meeting</p> <p>4 previous, just after the test, and Joe Hamilton</p> <p>5 told him that he would get paid all the lost time</p> <p>6 and the following Thursday, when it was due --</p> <p>7 the check was -- didn't -- they didn't give him</p> <p>8 the check. They said it didn't come in, so he</p> <p>9 got upset about that. Later on that afternoon</p> <p>10 when I come in, they found the check. And I</p> <p>11 believe, at the time, Joe Hamilton said the</p> <p>12 reason they didn't have the check in the morning</p> <p>13 is because they addressed the check to him. He</p> <p>14 hadn't open the envelope that morning.</p> <p>15 Q. Do you know if Mr. Hamilton was aware</p> <p>16 at all earlier during the day that Mr. Pizzuto</p> <p>17 was looking for his check?</p> <p>18 A. I believe management was.</p> <p>19 Q. Did you have any role with regard to</p> <p>20 getting Mr. Pizzuto his check?</p> <p>21 A. No. I just went in and asked him for</p> <p>22 it when I came off the road, they found it.</p> <p>23 Q. Thereafter, did you have any role with</p> <p>24 regard to the check?</p>

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1 **A. We had a meeting that night and check**
 2 **come in. -- we had a meeting with Mr. Hamilton,**
 3 **and I believe Mr. Quiggly was with me, I**
 4 **believe.**
 5 Q. Who was Mr. Quiggly?
 6 **A. He was the chief steward.**
 7 Q. Did he work at that same site?
 8 **A. No. He worked in South Boston.**
 9 Q. Was Mr. Quickly brought there
 10 especially for this meeting?
 11 **A. Yes.**
 12 Q. Do you recall what the nature of the
 13 meeting was?
 14 **A. The nature of the meeting was problems**
 15 **with Paul Pizzuto.**
 16 Q. Who was part of the meeting?
 17 **A. Mr. Hamilton, supervisor named**
 18 **Leveris.**
 19 Q. You and Mr. Quiggly?
 20 **A. Correct.**
 21 Q. Was Mr. Pizzuto part of the meeting?
 22 **A. Yes.**
 23 Q. Did you say a meeting at the end of the
 24 day?

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1 **A. Which we were waiting for Mr. Pizzuto**
 2 **to come in. He was going to be part of the**
 3 **meeting. This meeting was going to be for him,**
 4 **yes.**
 5 Q. Before Mr. Pizzuto had arrived back to
 6 the station, before the planned meeting, had you
 7 met with Hamilton and Leveris?
 8 **A. I met with -- yes, Mr. Hamilton, yes.**
 9 Q. Just Hamilton?
 10 **A. Mr. Leveris was there, too, I**
 11 **believe.**
 12 Q. What was being expressed to you?
 13 **A. That they had problems with Paul**
 14 **Pizzuto. They thought that -- we talked about**
 15 **medical issue because he had been out on family**
 16 **medical leave, we thought -- they thought it was**
 17 **discussed that maybe he should see a doctor or**
 18 **take a leave.**
 19 Q. Was it discussed that he had been on
 20 FMLA leave for some sort of mental issue?
 21 **A. Correct. Just the meeting that he had**
 22 **been threatening people, acting weird,**
 23 **paranoid.**
 24 Q. That was spoken by Mr. Hamilton?

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1 **A. Yes, correct.**
 2 Q. Had you observed any of that same
 3 behavior from Mr. Pizzuto?
 4 **A. I observed him being very stressed,**
 5 **yes.**
 6 Q. Have you ever observed him threatening
 7 anyone?
 8 **A. I personally not.**
 9 Q. Staying on that theme, what did
 10 Hamilton tell you about who was being threaten?
 11 **A. Supervisors like Chris Stemmons. Paul**
 12 **would say, you're going to get yours, the FBI is**
 13 **going to arrest you, maybe, Your day is coming.**
 14 **Nothing -- I was never -- nothing of, I'm going**
 15 **hurt you, or I'm going to shoot you, or I'm going**
 16 **to stab you.**
 17 Q. No threat of physical violence?
 18 **A. If it would have been physical, I think**
 19 **the company wouldn't have tolerated it. I took**
 20 **it, You're going to get yours, you're going to**
 21 **get fired.**
 22 Q. When you say you took it that way,
 23 based on what they were telling you --
 24 **A. Based on what they were telling me,**

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1 **right.**
 2 Q. What did it appear to be to you?
 3 **A. It appeared to be non-threatening**
 4 **because if it was threatening, I believe they**
 5 **would have called the police or they would have**
 6 **terminated him at the time.**
 7 Q. Had there been a custom or practice at
 8 that workplace if someone was threatening someone
 9 that the police would be involved?
 10 **MR. PERLMAN: Objection.**
 11 **A. I would say, yes, if somebody**
 12 **threatened them, they would call the police to**
 13 **escort that person from the property.**
 14 Q. Did that happen in this case?
 15 **A. No.**
 16 Q. Did Mr. Hamilton ask you to do
 17 anything?
 18 **A. He asked me to have a meeting with Paul**
 19 **because they were going to issue him a warning**
 20 **letter. The meeting never transpired, though,**
 21 **because Paul was upset. He wanted to go to his**
 22 **doctor. He left the property with me and**
 23 **Mr. Quiggly, he left the property.**
 24 Q. Had Mr. Hamilton asked you to

<p style="text-align: right;">Page 21</p> <p>1 specifically do anything with regard to Pizzuto</p> <p>2 at that time before --</p> <p>3 A. No, other than having a meeting with</p> <p>4 him to discuss what was going on, to tell him he</p> <p>5 was going to issued these warning letters, but</p> <p>6 the meeting never took place on that Thursday. A</p> <p>7 meeting took place with Paul and me and Quiggly</p> <p>8 and Paul, but never me and Mr. Hamilton.</p> <p>9 Q. Can you describe the meeting you had</p> <p>10 with Paul when he came back that time?</p> <p>11 A. I told Paul we found his check, he was</p> <p>12 upset that why didn't they give it to me this</p> <p>13 morning, he was pretty stressed out about it.</p> <p>14 You got it. Joe wants to see you. He thought</p> <p>15 that was going to be discipline and he didn't</p> <p>16 want to see him. He was kind of stressed, he</p> <p>17 left the property and I told Mr. Hamilton that we</p> <p>18 would take care of it the next morning when Paul</p> <p>19 punched in, to let it go.</p> <p>20 Q. Did you tell Paul it was okay to</p> <p>21 leave?</p> <p>22 A. No, I didn't, no.</p> <p>23 Q. You said Mr. Quiggly had a meeting with</p> <p>24 Mr. Pizzuto at the same time?</p>	<p style="text-align: right;">Page 23</p> <p>1 Q. When you say "paranoid," what do you</p> <p>2 mean?</p> <p>3 A. Paranoid that -- when you get paranoid</p> <p>4 when you think somebody is going to fire you</p> <p>5 because of the drug tests and a warning letter</p> <p>6 and all these meetings in a row, paranoia sets</p> <p>7 in, what did I do wrong.</p> <p>8 Q. You said Paul was acting paranoid, what</p> <p>9 was he doing to make you think that?</p> <p>10 A. Just by not wanting to talk about it,</p> <p>11 not -- I'll take care of it myself, I'll take to</p> <p>12 my doctor. I'll be going out on FMLA, I'll go on</p> <p>13 workman's comp.</p> <p>14 Q. At that meeting he was talking about</p> <p>15 perhaps going out on FMLA?</p> <p>16 A. Correct.</p> <p>17 Q. Or workman's comp?</p> <p>18 A. Yes.</p> <p>19 Q. Who raised the subject of doctors or</p> <p>20 medical treatment?</p> <p>21 A. All four of us talked about it. Me,</p> <p>22 Mr. Quickly, Mr. Leveris, Mr. Hamilton talk about</p> <p>23 it.</p> <p>24 Q. And what was said?</p>
<p style="text-align: right;">Page 22</p> <p>1 A. He was present with me, yes.</p> <p>2 Q. The three of you?</p> <p>3 A. Yes.</p> <p>4 Q. Was there anything else discussed there</p> <p>5 with regard to anything?</p> <p>6 A. No, other than that just Paul thinking</p> <p>7 that they were out to get him, they were treating</p> <p>8 him unfairly, these audit scans, he couldn't</p> <p>9 understand why they were coming up.</p> <p>10 Q. Were those the audit scans you</p> <p>11 mentioned before, the four times a week ones?</p> <p>12 MR. PERLMAN: Objection.</p> <p>13 A. Yes. I did say to Paul, Maybe you</p> <p>14 should speak to your doctor, if you're stressed</p> <p>15 like this. I think he asked me, Maybe I should</p> <p>16 see a doctor and I said maybe I do, but.</p> <p>17 Q. What did Mr. Pizzuto's state of mind</p> <p>18 appear to be at that time?</p> <p>19 A. Very stressed.</p> <p>20 Q. Since people used different words for</p> <p>21 different things, can you expand a little bit on</p> <p>22 that?</p> <p>23 A. Angry at the company, paranoid, scared</p> <p>24 that he was going to be fired.</p>	<p style="text-align: right;">Page 24</p> <p>1 A. What was said that if we thought -- we</p> <p>2 had a program that -- if he did go out there,</p> <p>3 would be some disability, but Paul had already</p> <p>4 had a previous problem, which I wasn't a part of,</p> <p>5 so when we discussed it with Paul, he didn't want</p> <p>6 the union doctor because he had his own doctor,</p> <p>7 but we were still interested in getting him</p> <p>8 disability insurance which we can -- 26-week's</p> <p>9 pay for you if you have a medical problem.</p> <p>10 Q. Could you get that if he didn't see the</p> <p>11 union doctor?</p> <p>12 A. Absolutely.</p> <p>13 Q. Were you describing that to Paul at the</p> <p>14 time?</p> <p>15 A. Yes. It wasn't important to him at the</p> <p>16 time.</p> <p>17 Q. Before you met with Paul and getting</p> <p>18 back to that conversation with Paul and Leveris,</p> <p>19 they were suggesting that maybe he should go out</p> <p>20 with this kind of disability?</p> <p>21 A. Absolutely. The way the situation was</p> <p>22 going with the scanning and arguments every day</p> <p>23 that he should get some get some medical opinion</p> <p>24 or he already was, or the company should get some</p>

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1 **medical opinions on him.**

2 Q. Did either Hamilton or Leveris appear
3 genuinely afraid of Mr. Pizzuto?

4 MR. PERLMAN: Objection.

5 **A. No.**

6 Q. How would you describe how they
7 presented themselves?

8 **A. Agitated, embarrassed.**

9 Q. Embarrassed?

10 **A. Yes, that somebody was questioning**
11 **their authority.**

12 Q. So you raised this idea of disability
13 with Mr. Pizzuto when he comes back?

14 **A. Yes.**

15 Q. And he was not interested --

16 **A. Yes, he was not.**

17 Q. He wasn't interested in seeing the
18 union doctor but he was thinking about seeing his
19 own?

20 **A. He had been seeing his own, yes, and I**
21 **believe he said he was going to go out on FML,**
22 **which I believe, or workers' comp.**

23 Q. After you met to Mr. Pizzuto, did you
24 go back and speak to Mr. Hamilton?

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1 **A. After Paul left the property, I did,**
2 **yes.**

3 Q. What was told to Mr. Hamilton?

4 **A. That he was agitated, he was stressed,**
5 **that we would meet the next morning.**

6 Q. Was there any discussion about Paul not
7 wanting to go on the program?

8 **A. I'm sure I told him that he doesn't --**
9 **yes.**

10 Q. What do you think he may have said?

11 **A. Joe Hamilton?**

12 MR. PERLMAN: Objection.

13 Q. Yes.

14 **A. I think I might have said that Paul is**
15 **not interested in the union program, union**
16 **benefits, seeing the union doctor; he had his**
17 **own.**

18 Q. A response from Hamilton to that?

19 **A. I don't recall. The response was while**
20 **we still have to see him to give him these**
21 **warning letters.**

22 Q. The next day he comes and what
23 happens?

24 **A. I was at the airport when they come**

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1 **back to the building about 7:15, 7:20, I was told**
2 **that they wanted to -- Mr. Hamilton wanted to see**
3 **me in the office with Paul, which we knew. We**
4 **were also informed that Paul had driven on**
5 **company property, up the ramp.**

6 Q. What was being alleged by management at
7 that point?

8 MR. PERLMAN: Objection.

9 **A. That he drove on their property**
10 **recklessly and they were afraid that he was going**
11 **to commit something violent or do something**
12 **violent.**

13 Q. Who was that that told you that?

14 **A. Joe Hamilton.**

15 Q. Do you know what they were talking
16 about as to him driving up on the property?

17 **A. I did not witness. They were saying**
18 **there was a ramp that trucks go in and out of.**
19 **They said that he drove up in that ramp at a high**
20 **rate of speed, that he punched in and got back in**
21 **his car, put his car back in the company assigned**
22 **parking spot.**

23 Q. That general action by a driver
24 punching in, driving up, going to park their car

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1 was that something unusual?

2 MR. PERLMAN: Objection.

3 **A. No, it wasn't.**

4 Q. What was the situation with regard to
5 that?

6 MR. PERLMAN: Objection.

7 **A. Drivers, when they were running late to**
8 **punch time -- because the company was getting**
9 **strict on tardiness. You could save two or three**
10 **minutes by doing that. They would drive up to**
11 **the ramp, go punch in, and quickly put their cars**
12 **back in spot, which would make them late**
13 **anyway.**

14 Q. They would be punched in?

15 **A. Correct.**

16 Q. And had you seen this happen, yes?

17 **A. Yes, I did it myself.**

18 Q. Can you put a frequency on it, I know
19 it's not a science, how many times a week this
20 might happen?

21 **A. I would say say this would happen ten**
22 **times a week, twice a day.**

23 Q. Was that something that people were
24 disciplined about?

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1 **A. No, they didn't discipline them.**
 2 Q. Were supervisors aware that this was
 3 happening?
 4 MR. PERLMAN: Objection.
 5 **A. I would say, yes, that they were**
 6 **aware.**
 7 Q. Have you seen supervisors in the
 8 vicinity when this was being done?
 9 **A. In order for a driver to do that, he**
 10 **would be late at the meeting, because usually at**
 11 **seven o'clock you had a meeting so you would be**
 12 **missing four minutes by the time it took you to**
 13 **put your car away so they would have to know**
 14 **where you were those four minutes.**
 15 Q. I've seen a number of drawings of that
 16 particular site, but anyway it looks like there
 17 is a ramp leading up to the building where all
 18 this activity goes on?
 19 **A. Correct.**
 20 Q. The ramp is outside the building?
 21 **A. Correct.**
 22 Q. And then there is an overhead door at
 23 the top of the ramp?
 24 **A. Correct.**

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1 Q. Which is open during business hours?
 2 **A. One.**
 3 Q. Was it the practice when people were
 4 running late for them to pull their car up to a
 5 particular spot or not?
 6 **A. Pull as close to the door as they could**
 7 **get, yes.**
 8 Q. On the ramp?
 9 **A. No.**
 10 Q. You were not a witness to Mr. Pizzuto
 11 driving up the ramp that day?
 12 **A. No, I was not.**
 13 Q. Have you ever seen him do that
 14 before?
 15 **A. No.**
 16 Q. Drive up the ramp?
 17 **A. I never saw him.**
 18 Q. During the time that you had any
 19 interaction with Mr. Pizzuto at the workplace,
 20 have you ever overheard him make any threats to
 21 supervisors?
 22 **A. Not physical threats.**
 23 Q. Non-physical threats?
 24 **A. I wouldn't call them threats.**

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1 Q. What kinds of things had you overheard
 2 him say to supervisors?
 3 **A. You're going to get yours, your name is**
 4 **going to be in the paper, the FBI is watching**
 5 **you, things like that.**
 6 Q. And who were he saying these things
 7 to?
 8 **A. A supervisor, Mr. Trudeau, maybe**
 9 **Mr. Leveris.**
 10 Q. Did it appear that either of those two
 11 gentlemen Trudeau or Leveris was afraid of
 12 Pizzuto as a result?
 13 MR. PERLMAN: Objection.
 14 **A. No, I don't believe they were afraid**
 15 **that they were going to be physical.**
 16 Q. Do you remember any of the
 17 circumstances under which he would be saying that
 18 to supervisors like Trudeau or Leveris?
 19 **A. He would say that while he were outside**
 20 **scanning him or he would say that when they told**
 21 **him that his audit scan was off that night.**
 22 Q. Did Mr. Pizzuto say to you, or anything
 23 to the effect, he thought that he that he was
 24 being conspired against?

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1 **A. Yes.**
 2 Q. Do you know why he was saying that to
 3 these supervisors that fit into context, the FBI
 4 was watching you, does that make any sense to
 5 you?
 6 MR. PERLMAN: Objection.
 7 **A. No, it made no sense.**
 8 Q. Did he appear to be ranting?
 9 **A. Yes.**
 10 Q. Did he appear to be talking nonsense?
 11 **A. Yes.**
 12 Q. Did any of the management come to you
 13 before that Thursday, the day before he was let
 14 go, had they come to you before that day advising
 15 you that Pizzuto was threatening people?
 16 **A. I don't believe -- I believe that most**
 17 **it came to a head the Thursday before he was**
 18 **fighting with the threats. I don't recall before**
 19 **that, no.**
 20 Q. Pizzuto worked there a number of years
 21 as had you?
 22 **A. Correct.**
 23 Q. Was this new behavior for Pizzuto,
 24 nonsense or rants like that to his supervisors,

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<p>1 or was this something that happened before?</p> <p>2 A. No.</p> <p>3 Q. What did you make of it?</p> <p>4 A. That he had a problem.</p> <p>5 Q. Emotional problem?</p> <p>6 A. Stress, emotional, mental.</p> <p>7 Q. What did you want to see happen on that</p> <p>8 last day?</p> <p>9 A. I wanted him to -- them to put him out</p> <p>10 of service and let the doctors argue it.</p> <p>11 Q. Had you mentioned that to them?</p> <p>12 A. Yes.</p> <p>13 Q. What was the reaction?</p> <p>14 A. The reaction was that they were</p> <p>15 terminating him for just cause, for driving up on</p> <p>16 the property.</p> <p>17 Q. As far as you understood it, did the</p> <p>18 company have that option to put him out of</p> <p>19 service, have the doctors examined?</p> <p>20 A. Absolutely.</p> <p>21 Q. When I said, was that mentioned to you</p> <p>22 to them by them I meant Hamilton and Leveris; is</p> <p>23 that what you meant?</p> <p>24 A. Yes, but they already made the decision</p>	<p>1 Q. They had relayed to you Hamilton and</p> <p>2 Leveris -- that morning driving up the ramp?</p> <p>3 A. They thought he was -- drove, correct.</p> <p>4 Q. Was anything more than that being said</p> <p>5 like look -- like he was trying to hit</p> <p>6 somebody?</p> <p>7 A. No, I don't recall that.</p> <p>8 Q. Was it said that anyone was in any</p> <p>9 particular danger by the way he drove up?</p> <p>10 A. No, I don't believe because if they</p> <p>11 were, they would have called the police.</p> <p>12 Q. You mean at the time?</p> <p>13 A. Yes. If somebody -- a car is a weapon,</p> <p>14 same as a bat or a knife, they would have called</p> <p>15 the Stoneham police.</p> <p>16 Q. How long do you think it was between</p> <p>17 the time Pizzuto drove up that day and the time</p> <p>18 he was actually terminated?</p> <p>19 A. Within 45 minutes.</p> <p>20 Q. Do you know what he was doing in the</p> <p>21 meantime?</p> <p>22 A. He was at his truck, loading it.</p> <p>23 Q. If someone was considered to be a</p> <p>24 threat and dangerous, would that have been</p>
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<p>1 to terminate.</p> <p>2 Q. Did they tell you why they weren't</p> <p>3 going to go that route?</p> <p>4 A. Because of his actions that morning,</p> <p>5 driving up the ramp.</p> <p>6 Q. Had those actions not occurred, had</p> <p>7 they told you what they were going to do?</p> <p>8 A. They were going to issue him two</p> <p>9 warning letters.</p> <p>10 Q. Either way, he was not being taken out</p> <p>11 of service and sent to a doctor, correct?</p> <p>12 A. No.</p> <p>13 Q. He was going to get a warning or two</p> <p>14 warnings?</p> <p>15 A. Or go back to work.</p> <p>16 Q. Or he was going to get fired?</p> <p>17 MR. PERLMAN: Objection.</p> <p>18 MR. MULHEARN: That's a confusing</p> <p>19 question.</p> <p>20 A. Up until he punched in, drove on the</p> <p>21 property Friday, he was going to get a warning,</p> <p>22 two warnings, because he drove up the ramp, they</p> <p>23 decided to discharge him, their mind was made up</p> <p>24 to discharge.</p>	<p>1 allowed to take place?</p> <p>2 MR. PERLMAN: Objection.</p> <p>3 A. No. They would be been discharged</p> <p>4 immediately and the police would have been</p> <p>5 called.</p> <p>6 Q. Have you told us -- at the termination</p> <p>7 meeting, have you told us everything that took</p> <p>8 place at that meeting?</p> <p>9 A. I believe so, yes.</p> <p>10 Q. Do you remember any discussion or</p> <p>11 statement by Hamilton to Pizzuto at that</p> <p>12 termination meeting as to whether Pizzuto needed</p> <p>13 medical help?</p> <p>14 A. Yes, I believe that was discussed. Joe</p> <p>15 Hamilton thought that he needed to see a doctor,</p> <p>16 and he thought the union -- probably thought he</p> <p>17 should have seen a doctor but Paul was already</p> <p>18 seeing a doctor, so, you know, nobody can make</p> <p>19 you change doctors. I'm sure the company was</p> <p>20 aware more so than me of what his problems were.</p> <p>21 They had more access to his personal records than</p> <p>22 I do.</p> <p>23 Q. Was it clear to you before you walked</p> <p>24 into that termination meeting that Pizzuto was</p>

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1 going to get terminated?
 2 **A. No.**
 3 Q. What did you think could happen beyond
 4 that?
 5 **A. I thought that he was going to get two**
 6 **warning letters, that's what I thought.**
 7 Q. The fact that he was terminated came as
 8 a surprise to you?
 9 **A. Came as a surprise to me.**
 10 Q. Based on your observations at that
 11 station during the years 2002, 2003, did it
 12 appear that Mr. Pizzuto was being picked on by
 13 management?
 14 **A. I would say he was being overmanaged.**
 15 Q. What leads you to say that?
 16 **A. I believe they were out scanning him**
 17 **more than other people, watching his paperwork**
 18 **more than other people.**
 19 Q. To the extent that was happening, to
 20 your observation if Pizzuto was concerned about
 21 them looking to fire him, was that an irrational
 22 thought on his part?
 23 MR. PERLMAN: Objection.
 24 **A. No, not irrational to be scared to lose**

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1 **your job.**
 2 Q. Especially if you were being scanned
 3 and looked at more than others?
 4 **A. Right.**
 5 Q. So when you say "paranoid," it sounds
 6 like there is some basis, however, that he was
 7 being targeted, is that so?
 8 MR. PERLMAN: Objection.
 9 **A. Yes, when you're getting written up and**
 10 **other people aren't, you get paranoid about why**
 11 **are they singling me out.**
 12 Q. I have a different idea of paranoid.
 13 Let me share mine. Paranoid is like your seeing
 14 things that are not there, overly concerned about
 15 danger because there is no danger to be concerned
 16 about. Take my definition, was Pizzuto
 17 paranoid?
 18 **A. No. My definition of paranoid is you**
 19 **come in on Monday, you get a warning letter, you**
 20 **come in on Tuesday, you get a warning letter,**
 21 **Wednesday you're going to get paranoid that you**
 22 **are going to get another one.**
 23 Q. There a word called pessimistic.
 24 **A. I'm using the word paranoid as scared**

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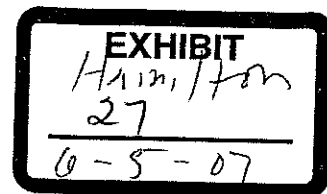
1 **or uncertain.**
 2 Q. Or fearful?
 3 **A. Yes.**
 4 Q. Is fearful a good word?
 5 **A. If you get hit with a stick three days**
 6 **in a row, my definition of paranoid is holy shit,**
 7 **I'm paranoid I'm going to get hit with that stick**
 8 **even though I'm don't know that for sure until I**
 9 **get it.**
 10 MR. MULHEARN: I have no further
 11 questions.
 12 CROSS-EXAMINATION
 13 BY MR. PERLMAN:
 14 Q. Do you know that Paul Pizzuto was
 15 accused of Teamsters of killing his dog.
 16 **A. I may have heard some through the**
 17 **grapevine of that.**
 18 Q. What did you hear?
 19 **A. That his dog got killed.**
 20 Q. Did you hear that the Teamsters was
 21 behind the killing of his dog?
 22 **A. I really didn't hear Teamsters. I**
 23 **heard Blue, business agent had killed his dog,**
 24 **but yes, those are stories like fishing stories**

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1 **get big by the time I hear them. I just heard**
 2 **that just last week, by the way.**
 3 Q. From whom?
 4 **A. I heard it from another employee at DHL**
 5 **Mike Rae, R-A-E.**
 6 Q. What did Mr. Rae tell you about the
 7 untimely demise of Mr. Pizzuto's dog?
 8 **A. He was laughing and said Mr. Pizzuto's**
 9 **dog got hit by a car and that he had heard it was**
 10 **Luke.**
 11 Q. I'm sorry, Mr. Rae had heard it was Lou
 12 Degiapallo (phonetic)?
 13 **A. He didn't say Lou Degiapallo, he said**
 14 **Lou.**
 15 Q. Did you ever talk to Mr. Pizzuto about
 16 how his dog passed?
 17 **A. No.**
 18 Q. Are you aware that Mr. Pizzuto has
 19 insinuated that he was going to file a lawsuit
 20 against the union?
 21 **A. No.**
 22 Q. Mr. Pizzuto, is he a friend of yours?
 23 **A. No.**
 24 Q. Did you ever see him socially?

<p style="text-align: right;">Page 57</p> <p>1 events of the morning of the next day, the day 2 that Paul was terminated, who did you first hear 3 from about Mr. Pizzuto how he came to enter the 4 workplace? 5 A. It would be either Mr. Leveris or Mr. 6 Hamilton. 7 Q. It wasn't one of the drivers? 8 A. I'm sure that if they saw me on the way 9 to their office, they would say, yes. It was all 10 over the building. 11 Q. You testified before, that with some 12 regularity, drivers will temporarily park their 13 car at or near the facility punch in and go back 14 out, make sure you beat the clock? 15 A. Yes. 16 Q. You also testified about there being a 17 ramp and an overhead door? 18 A. Yes. 19 Q. And inside is where the clock is? 20 A. Correct. 21 Q. Now, drivers would park at the bottom 22 of the ramp to do this punch-in, right? 23 A. Near the bottom, on the top, before the 24 overhead door.</p>	<p style="text-align: right;">Page 59</p> <p>1 you looking at? 2 MR. PERLMAN: 32. 3 Q. I ask him if he thought he needed 4 medical help so that I would work with Airborne 5 to provide that help. Did Mr. Hamilton say that 6 to Mr. Pizzuto? 7 A. I would say he did. 8 Q. He would not respond to me other than 9 to say that he was here to receive discipline so 10 issue the discipline; is that what Mr. Pizzuto 11 said? 12 A. I believe that would have been said, 13 yes, issue my discipline. 14 Q. Mr. Hamilton also says that Pizzuto at 15 some point in that meeting asked him, asked 16 Hamilton, if he was telling him to punch out 17 because if he was, he was going to leave and go 18 directly to his doctor; was that said by Mr. 19 Pizzuto? 20 A. Say that again. 21 Q. He asked me, Joe Hamilton, he asked me 22 if I was telling him to punch out because he was 23 going to leave and go directly to his doctor; is 24 that accurate?</p>
<p style="text-align: right;">Page 58</p> <p>1 Q. Not inside the overhead door? 2 A. They have thought it -- would believe 3 unusual to go inside the overhead door because 4 generally there is a lot of work going on in that 5 area. 6 Q. When you talk about -- I want to 7 make -- I understand what you say is routine. It 8 is routine for people to come to the bottom of 9 the ramp or be on the ramp -- 10 A. To go into the building, yes. 11 Q. That's not a regular thing to happen at 12 all. Okay. Talk about the termination now. 13 Here is what Mr. Hamilton says that's what 14 happened. At 0725 hundred hours myself, Arthur 15 Leveris, Gerry Halloran and Paul Pizzuto had a 16 meeting at the MSH conference room, did that 17 happen? 18 A. Yes. 19 Q. I told Paul, this is Hamilton, I told 20 Paul I had real concerns about his behavior and 21 that he was a safety issue at that stage; do you 22 agree that Hamilton told Paul that? 23 A. Yes. 24 MR. MULHEARN: What exhibit are</p>	<p style="text-align: right;">Page 60</p> <p>1 A. Is that also saying I'm going to my 2 doctor, I'm going on FMLA? Yes, that would be 3 accurate. 4 Q. Then Mr. Hamilton reports, he said he 5 was going to have his doctor write a note saying 6 he was fine to come to work; is that something 7 Mr. Pizzuto said? 8 A. Right, that's correct. He does have a 9 doctor. 10 Q. He then said he would be going on FMLA 11 under stress; is that something that Mr. Pizzuto 12 said that day? 13 A. I would say that he said that before he 14 was terminated, yes, he probably did, yes. 15 Q. Other than what you testified to when 16 Mr. Mulhearn was asking you questions and things 17 we just discussed here, is there anything else 18 that Mr. Hamilton said to Mr. Pizzuto or 19 Mr. Pizzuto said to Mr. Hamilton during the 20 termination meeting that you recall? 21 A. Not that I recall. 22 Q. Is there anything you could look at -- 23 A. You got to remember from Thursday 24 night, I'm looking at a guy we know we have</p>

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<p>1 Q. You said that he was subject, as far as</p> <p>2 you know, subject to a number of audit scans the</p> <p>3 week he was terminated?</p> <p>4 A. Yes.</p> <p>5 Q. He was complaining about missing</p> <p>6 freight at that time in that same week?</p> <p>7 A. Because his audits scan show, he was --</p> <p>8 he was saying from what I can think of it, he was</p> <p>9 going out but didn't have all his freight.</p> <p>10 Q. Isn't it possible that Mr. Pizzuto</p> <p>11 brought these audit scans upon himself by</p> <p>12 actually --</p> <p>13 A. Anything is possible.</p> <p>14 Q. Do you think that likely?</p> <p>15 A. I think it's possible. It can happen</p> <p>16 due to the fact -- basically the operation.</p> <p>17 Q. If a driver is complaining about</p> <p>18 missing packages and saying he thinks the company</p> <p>19 is stealing packages from his truck, wouldn't</p> <p>20 that be grounds to conduct an audit scan on a</p> <p>21 truck?</p> <p>22 MR. MULHEARN: Objection.</p> <p>23 A. You know, you can also use that</p> <p>24 auditing as a weapon. It's not random. If you</p>	<p>1 Q. What sources told you?</p> <p>2 A. Other drivers.</p> <p>3 Q. Could you remember any names of any</p> <p>4 drivers who told you?</p> <p>5 A. Not offhand.</p> <p>6 Q. Did you hear Paul Pizzuto say anything</p> <p>7 along these lines, any of this within your</p> <p>8 earshot?</p> <p>9 A. No.</p> <p>10 Q. The statements, just to be clear, that</p> <p>11 you heard about from others having been made</p> <p>12 we're talking about July 2003?</p> <p>13 A. June or July, yes. Mostly July.</p> <p>14 Q. Was Mr. Pizzuto a good driver?</p> <p>15 A. I would have to say he would have to be</p> <p>16 to last as long as he did.</p> <p>17 Q. He was good at his job?</p> <p>18 A. Yes. To last as long as he did. If he</p> <p>19 wasn't, he would have been gone.</p> <p>20 Q. When did you become a union steward?</p> <p>21 A. I would have to say in 1982.</p> <p>22 Q. How did you happen to become a</p> <p>23 steward?</p> <p>24 A. I was elected, I think. I ran for</p>
Page 70	Page 72
<p>1 want to leap on an employee, you can do it. It</p> <p>2 was done to me, it is done to outspoken people.</p> <p>3 I would rather prefer, as a union rep, that the</p> <p>4 audit scans are done randomly like drug test, and</p> <p>5 they weren't. It puts a lot of pressure on you.</p> <p>6 I feel myself, which I didn't think I deserved.</p> <p>7 I was never worried about audit scan until</p> <p>8 somebody was discharged for it.</p> <p>9 Q. You don't know one way or the other</p> <p>10 whether Mr. Pizzuto was discriminated against on</p> <p>11 the basis of any sort of disability, do you?</p> <p>12 A. I can't -- discriminated against? I</p> <p>13 know you're trying to ask me if DHL discriminate? I</p> <p>14 I can't answer that question.</p> <p>15 Q. That's fair. You mentioned a few</p> <p>16 statements that Mr. Pizzuto made that I may</p> <p>17 characterize as threats. I think you</p> <p>18 characterize them as threats as well, but you're</p> <p>19 going to get yours, your name is going to be in</p> <p>20 the paper, the FBI is going to get you; are those</p> <p>21 things you heard Mr. Pizzuto say?</p> <p>22 A. Personally, no. But I was told that he</p> <p>23 said it and I reason to believe he said it, yes I</p> <p>24 heard from good sources.</p>	<p>1 election.</p> <p>2 Q. Was it something you were interested in</p> <p>3 doing, being leader in the union?</p> <p>4 A. Yes.</p> <p>5 Q. Who was your contact in the union</p> <p>6 during period of Pizzuto's employment during the</p> <p>7 2002, 2003?</p> <p>8 A. Who was my contact at the union, Louis</p> <p>9 Giapallo (phonetic).</p> <p>10 Q. What was his position?</p> <p>11 A. Vice-president and representative of</p> <p>12 the Airborne people, Teamster Local 25.</p> <p>13 Q. Did you have any sort of reporting</p> <p>14 requirement to the union?</p> <p>15 A. No. As far as -- yes, I would report</p> <p>16 to them if they disciplined somebody, suspended</p> <p>17 them or discharged them</p> <p>18 Q. How many hours a week, forgive me for</p> <p>19 not knowing how this works, was it a large time</p> <p>20 commitment on your part?</p> <p>21 A. Not really, sometimes it could be if</p> <p>22 you had discharged, two hours a week to ten hours</p> <p>23 a week.</p> <p>24 Q. Did you receive any additional</p>



Name: Paul Pizzuto

Certified Mail #

By reason of your conduct described below, it is necessary to issue this notice of:

XXX WARNING EFFECTIVE:
 SUSPENSION EFFECTIVE:
 DISCHARGE EFFECTIVE:

ARTICLE 35, SECTION 3
 XXX CARELESS AND NEGLECTFUL PERFORMANCE OF DUTIES
 INSUBORDINATION
 GROSS NEGLIGENCE
 ATTENDANCE
 FAILURE TO FOLLOW INSTRUCTIONS/DIRECT WORK ORDER
 FAILURE TO MEET JOB REQUIREMENTS
 THEFT AND DISHONESTY

SPECIFICALLY:

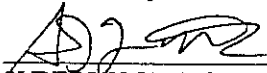
On 07/24/03 you had an OFD failure on AWB 73055263422. This type of performance jeopardizes our current customer base. This letter is written pursuant to Article 47 of the N.M.F.A. and New England Supplemental Agreement.

Further violations of this kind will result in additional disciplinary action. This is your final warning.


 FIELD SERVICES SUPERVISOR

Distribution:

Employee
 Local 25 (Certified)
 Regional Manager
 District Manager
 Employee File
 Shop Steward


 SUPERVISOR SIGNATURE

7/24/03
 DATE

 UNION REPRESENTATIVE DATE

 EMPLOYEE SIGNATURE

 DATE

 AIRBORNE REPRESENTATIVE DATE

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<p>Volume I Pages 1-88 UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS</p> <p>Docket No. 04-12492-GAO</p> <p>PAUL PIZZUTO, Plaintiff, vs.</p> <p>AIRBORNE EXPRESS, INC., STEVEN CROSSKEN, JOSEPH HAMILTON, GREG SWEATT and ARTHUR LEVERIS, Defendants.</p> <p>DEPOSITION OF JAMES O'BRIEN, called as a witness by counsel for the Plaintiff, pursuant to the applicable provisions of the Federal Rules of Civil Procedure, before Jennifer A. Doherty, CSR No. 1398F95 and Notary Public in and for the Commonwealth of Massachusetts, taken at the offices of Richard A. Mulhearn, 41 Elm Street, Worcester, Massachusetts on Thursday, June 14, 2007 commencing at 11:55 a.m.</p> <p>***** FLYNN REPORTING ASSOCIATES Professional Court Reporters One Exchange Place Worcester, Massachusetts 01608 (508) 755-1303 * (617) 536-2727 TOLL FREE: (888) 244-8858 FAX: (508) 752-4611</p>	<p>1</p> <p>INDEX</p> <p>2 Testimony of: Direct Cross Redirect Recross</p> <p>3 JAMES O'BRIEN</p> <p>by Mr. Mulhearn 4</p> <p>by Mr. Perlman 56</p> <p>5</p> <p>6</p> <p>EXHIBITS</p> <p>7 No. Description For I.D.</p> <p>8 63 Diagram 42</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>**EXHIBITS RETAINED BY ATTORNEY MULHEARN**</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p>Page 2</p> <p>1 APPEARANCES:</p> <p>2 BY: Richard Mulhearn, Esq.</p> <p>3 41 Elm Street</p> <p>4 Worcester, Massachusetts 01609</p> <p>5 For the Plaintiff.</p> <p>6</p> <p>7 SULLIVAN, WEINSTEIN & McQUAY, P.C.</p> <p>8 BY: C. Max Perlman, Esq.</p> <p>9 2 Park Plaza</p> <p>10 Boston, Massachusetts 02116</p> <p>11 617-348-4300</p> <p>12 max@swmlawyers.com</p> <p>13 For the Defendants.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>Exhibit 4</p>	<p>Page 4</p> <p>1 PROCEEDINGS</p> <p>2 STIPULATIONS</p> <p>3 It is stipulated by and between counsel</p> <p>4 for the respective parties that the deposition</p> <p>5 transcript will be read and signed by the</p> <p>6 deponent within thirty (30) days of receipt of</p> <p>7 transcript under the pains and penalties of</p> <p>8 perjury. The filing and the notarization are</p> <p>9 hereby waived.</p> <p>10 JAMES O'BRIEN, having been</p> <p>11 satisfactorily identified and duly sworn by the</p> <p>12 Notary Public, was examined and testified as</p> <p>13 follows:</p> <p>14 DIRECT EXAMINATION</p> <p>15 BY MR. MULHEARN:</p> <p>16 Q. Can you state your full name?</p> <p>17 A. James W. O'Brien, Jr.</p> <p>18 Q. Your address, sir?</p> <p>19 A. I moved this week. Currently, it's 390</p> <p>20 Walnut Street, Lynn, Massachusetts 01905.</p> <p>21 Previous was 22 Coral Hill, Essex, Mass.</p> <p>22 Q. By whom are you employed?</p> <p>23 A. DHL/Airborne Express.</p> <p>24 Q. We understand from previous testimony</p>

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<p>1 and common knowledge at some point DHL took over</p> <p>2 Airborne?</p> <p>3 A. Correct.</p> <p>4 Q. What I'll ask you is questions about</p> <p>5 Airborne, and by that, it includes DHL, so be</p> <p>6 it?</p> <p>7 A. That's fine.</p> <p>8 Q. How long have you worked at Airborne?</p> <p>9 A. Going into my 19th year.</p> <p>10 Q. Your position?</p> <p>11 A. Driver.</p> <p>12 Q. The whole time?</p> <p>13 A. Correct.</p> <p>14 Q. And out of what station do you work?</p> <p>15 A. North Shore station.</p> <p>16 Q. Is that abbreviations now?</p> <p>17 A. NSH.</p> <p>18 Q. Previously, did it have other</p> <p>19 initials?</p> <p>20 A. I don't think so.</p> <p>21 Q. Is that located in Stoneham?</p> <p>22 A. Yes.</p> <p>23 Q. Have you always worked out of that</p> <p>24 location?</p>	<p>1 supervisors, he'd be next in line to the station</p> <p>2 manager.</p> <p>3 Q. Just to understand the chain of</p> <p>4 command, there would be on-line supervisors</p> <p>5 first?</p> <p>6 A. Yes. There is Woburn, Beverly, North</p> <p>7 Shore and what's the other belt? There are four</p> <p>8 belts, each belts has its own supervisor for that</p> <p>9 particular sort. He was in charge of the</p> <p>10 drivers -- there are two belts on each side, the</p> <p>11 supe in charge of everybody on the right side the</p> <p>12 other supe is in charge of everybody on the left</p> <p>13 side and the cottage manager oversees the station</p> <p>14 manager.</p> <p>15 Q. Do you know Paul Pizzuto?</p> <p>16 A. Yes.</p> <p>17 Q. For how long have you known him?</p> <p>18 A. I've known him since his first day at</p> <p>19 DHL. I work up at the old North Shore station in</p> <p>20 North Reading, and that's where Paul started.</p> <p>21 Q. Before Airborne, where were you</p> <p>22 working?</p> <p>23 A. Before Airborne, I had my own company.</p> <p>24 I had a canteen truck. I was the canteen driver</p>
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<p>1 A. No. Over the years I worked out of the</p> <p>2 Boston location, Needham location and previous</p> <p>3 North Shore station at Concord Street.</p> <p>4 Q. Do you remember when you began working</p> <p>5 out of Stoneham, approximately?</p> <p>6 A. Approximately, when it opened, when</p> <p>7 they moved from the Woburn station. I'd say</p> <p>8 about 14 years.</p> <p>9 Q. For the last 14 years, it's been out of</p> <p>10 Stoneham?</p> <p>11 A. They moved to Stoneham. I've been at</p> <p>12 Stoneham since they have been at Stoneham.</p> <p>13 Q. Were you working in Stoneham in the</p> <p>14 years 2002, 2003?</p> <p>15 A. Yes.</p> <p>16 Q. Who were the station managers at the</p> <p>17 time?</p> <p>18 A. I want to say -- must have been Steve</p> <p>19 Crossken. I think it was Steve Crossken and Joe</p> <p>20 Hamilton after Steve Crossken.</p> <p>21 Q. There was a gentleman named Arthur</p> <p>22 Leveris that worked there?</p> <p>23 A. He was a station manager, he was a</p> <p>24 cottage manager where he oversaw all the on-line</p>	<p>1 for Airborne Express, so when I sold it, that's</p> <p>2 how I ended up coming --</p> <p>3 Q. Is there like coffee and beverages?</p> <p>4 A. Yes, I had a coffee truck.</p> <p>5 Q. Would you consider yourself to be a</p> <p>6 friend of Paul Pizzuto's?</p> <p>7 A. I'm a friend of all the drivers. We</p> <p>8 were never friends as far as on a one-on-one</p> <p>9 basis. I never chummed around with him all the</p> <p>10 time. Paul doesn't have any kids. I have three</p> <p>11 kids. My lifestyle is curbed. No golfing all</p> <p>12 the time and stuff. He liked to golf, he used to</p> <p>13 golf. I used to kid him that they don't like</p> <p>14 guys with kids that's --</p> <p>15 MR. MULHEARN: Off the record.</p> <p>16 (Discussion off the record.)</p> <p>17 Q. Did you have an opportunity during the</p> <p>18 course of working at the Stoneham facility in</p> <p>19 2002 to 2003 to observe how Paul was treated by</p> <p>20 the supervisors of the managers there?</p> <p>21 A. They tended to get on Paul more than</p> <p>22 some of the other drivers.</p> <p>23 Q. And what do you mean by that, "get</p> <p>24 on"?</p>

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<p>1 A. I would say he was micromanaged. The</p> <p>2 reason I say that is generally if they had a</p> <p>3 problem with me or if I misdelivered a package</p> <p>4 had missed routes, my on-line supervisor would</p> <p>5 come down and say, Jimmy, you didn't scan all</p> <p>6 five pieces yesterday. Paul for whatever reason</p> <p>7 couple times he was having the station manager</p> <p>8 who never really oversaw the drivers, would come</p> <p>9 out and personally audit scan Paul's truck.</p> <p>10 If they let the other manager know</p> <p>11 how they should be taken care of him, like old</p> <p>12 ladies in there. The station manager audit</p> <p>13 scanning Pizzuto's truck. They didn't do it to</p> <p>14 anybody else. The supervisor did, but not the</p> <p>15 station manager</p> <p>16 Q. And which station manager are you</p> <p>17 thinking of?</p> <p>18 A. Steve Crossken mainly and Joe</p> <p>19 Hamilton.</p> <p>20 Q. And what is an audit scan?</p> <p>21 A. They have priority and DHL at the time</p> <p>22 they were real big on scanning every piece of</p> <p>23 freight on your truck so they would know where it</p> <p>24 was because we download all our scanners, so they</p>	<p>1 practice that they would audit scan your truck</p> <p>2 for security purposes, but they only do ten</p> <p>3 packages random and make sure you scan them for</p> <p>4 security purposes.</p> <p>5 You never saw the station manager</p> <p>6 scanning other people's truck but Paul's. I</p> <p>7 don't know if it was because he had a problem</p> <p>8 with his on-line supe, I don't know the</p> <p>9 particular reasons, but Paul wasn't on my belt.</p> <p>10 I was on the Beverly belt, he was over doing</p> <p>11 Methuen, I think, up in that area, or I might</p> <p>12 have been doing Lowell. I wasn't right next to</p> <p>13 him. I don't know all the particulars, but I</p> <p>14 know they were doing it. Like I said, it's a</p> <p>15 bunch of old ladies; they can't wait to see</p> <p>16 somebody get in trouble in there.</p> <p>17 Q. When you said warning letters went to</p> <p>18 certain drivers, what did you mean by that?</p> <p>19 MR. PERLMAN: Objection.</p> <p>20 A. They didn't treat everybody the same</p> <p>21 that was a lot of guy's beefs in there that</p> <p>22 punishment wasn't doled out the same to some</p> <p>23 people and they do absentism, one guy, Jimmy you</p> <p>24 got seven, eight days out, we are going to give</p>
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<p>1 know that that piece in on my truck. If somebody</p> <p>2 called says, I have a Del computer going to 24</p> <p>3 New Boston Street in Woburn can you tell me what</p> <p>4 time the delivery is going to be? The driver has</p> <p>5 that aboard then they call you say they're</p> <p>6 looking for it, can you get it in a certain</p> <p>7 amount of time.</p> <p>8 If you don't scan everything for</p> <p>9 whatever reason, then they wouldn't know if you</p> <p>10 didn't have the package or you had the package.</p> <p>11 A lot of time we had so much freight not so much</p> <p>12 the hard freight because we write it all down so</p> <p>13 you know what's in the back of your truck, but</p> <p>14 your envelopes, we put them in buckets, you put</p> <p>15 your afternoon bucket on one seat and sometimes</p> <p>16 you get talking you can't remember if you scanned</p> <p>17 your bucket or didn't scan your bucket or the</p> <p>18 driver next to you distracts you and you can't</p> <p>19 remember where you left off scanning, so they</p> <p>20 were really hot on it. If you had more than two</p> <p>21 pieces that weren't scanned, they'd come down and</p> <p>22 call you on it and stuff and sometimes give</p> <p>23 warning letters out to certain drivers.</p> <p>24 Like I said, it was standard</p>	<p>1 you a suspension letter. You have to fight it.</p> <p>2 The next guy come in get a suspension letter when</p> <p>3 they do stuff, they do at their whims. Today</p> <p>4 we're going to call everybody over their 5-day</p> <p>5 sick, but the guy next to him might have 44 days</p> <p>6 sick, they just decide to crack down on the</p> <p>7 policy in October. I've got 7-days sick, I'm</p> <p>8 getting the same punishment as guy with 44 days</p> <p>9 because unionwise, they have to give you a</p> <p>10 warning letter a suspension they can't just give</p> <p>11 you -- they have to give you some type of</p> <p>12 progressive discipline.</p> <p>13 They wouldn't give the progressive</p> <p>14 discipline, like I say, to this driver. Then</p> <p>15 when they decide to do it, you say, Geez, the</p> <p>16 guys got 44 days out, I got 8 days out, I'm</p> <p>17 getting the same punishment as him, what's wrong</p> <p>18 with this? And they did that with a lot of</p> <p>19 things. It wasn't the same for everybody, not in</p> <p>20 one particular person a lot of different drivers.</p> <p>21 it wasn't the same for everybody. They were very</p> <p>22 poor as far as their discipline in keeping things</p> <p>23 the same for every single driver. Six days,</p> <p>24 everyone gets it. Some guys 20, 30 days and</p>

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1 they'd be called in and some guy would be called
2 in on his fifth day.

3 Q. Did it appear to you if there was a
4 reason for those kinds of differences between
5 severity of discipline?

6 A. For Pizzuto or just anybody?

7 Q. In general.

8 A. Yes, I think it was personality
9 especially with Arthur Leveris and Steve
10 Crossken. Anybody that questioned their
11 authority in any way or form whether they were
12 right or wrong, they couldn't let it go. If the
13 driver's right they couldn't say, Gee, the
14 driver's right. I'll deal with him down the
15 road. They could never let it go that you were
16 right. They would just stay on that driver.
17 Every little thing they would try to push the
18 driver's buttons.

19 Q. Did you see that happening with regards
20 to Paul?

21 A. I saw that, yes, definitely with Paul.
22 Paul was the type of driver, he was kind of the
23 kid in first grade that some kids would pick on,
24 the more you pushed him the more you get a

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1 reaction, he'd get upset, and he reminded of the
2 kid in school that was fun to pick on because you
3 got a response other than someone who let's it
4 roll off their back.

5 Q. Were there as far as these scans and
6 audit scans and so forth, what was the point to
7 all that?

8 MR. PERLMAN: Objection.

9 A. The point of the audit scans, first of
10 all was for customer service. You mean the
11 management, scanning manager, audit scans were
12 sometime for security. If they never audit scan
13 your truck -- we have cameras in the building you
14 don't have to worry about someone taking
15 something off your truck, but back then there was
16 no security cameras. I could have my truck half
17 loaded. Somebody could walk by my truck after I
18 scanned the piece, take a piece off my truck.
19 I've got 400 pieces, they could send it back down
20 the belt, stuff could be stolen then I'm
21 responsible for it.

22 In the same respect, management
23 would scan to make sure I'm not taking your
24 freight out. Maybe they sent you up going to

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1 unload the cans, throw it on my truck, then the
2 next thing I got out the building and drop it off
3 at home so they would just periodically go in and
4 scan a couple of trucks 10, 12 pieces to see if
5 you had anything that didn't belong to you on
6 your truck just to keep everybody on the up and
7 up.

8 Paul's case they were scanning his
9 whole truck the reason being at that time, they
10 were hot on giving letters to drivers who didn't
11 scan every single piece. Jimmy had three outfit
12 delivery scans yesterday that you didn't scan. I
13 don't know what they came from. I could have
14 scan the wrong bar code. I don't know, you know,
15 but there were really out on that. Paul started
16 arguing with them about it, Geez then I'm going
17 to scan my whole truck again because I don't
18 trust your scans and it becomes kind of like a
19 little he-said-she-said thing. They would be
20 scanning, he would be re-scanning them. He
21 didn't trust them. They would be mad at him. He
22 didn't depart the station quick enough because he
23 re-scanned his truck again.

24 Q. When the supervisor or manager did the

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1 audit scan in somebody's truck, typically was the
2 driver right there?

3 A. Yes.

4 Q. And was it done though sometimes when
5 the driver wasn't there?

6 A. No. If it was, it wasn't supposed to
7 be.

8 Q. We heard from other testimony there was
9 a process there where after the truck is loaded
10 and everything is scanned that the driver would
11 go and place the scanner into some sort of cradle
12 to download it?

13 MR. PERLMAN: Objection.

14 Q. Is that the process?

15 A. Yes, after I scan everything, we don't
16 know because of the wireless router systems, but
17 back then, you had to put in "send," you have to
18 go put your scanner in and it would download.
19 Then afterwards they want you twice a day go to a
20 pay phone and we had a coupler, it would fit over
21 the mouthpiece of a phone. It would send all the
22 data over the phone. It became outdated. Our
23 scanners scan continuously as we are walking they
24 are always sending the information but back then

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1 they didn't we would have to go back to the
2 office and mull around, wait for the scanner to
3 scan. Half the time the printer would break and
4 we'd end up there for 40 minutes.

5 Q. Were there any times that you observed
6 either you or the other drivers where the scanner
7 was missing when they went back to retrieve it?

8 A. Yes, it happens to everybody. You grab
9 the wrong scanner because they are all the same
10 back then especially if your out in front of the
11 belt it would be an inbound scanner, then if
12 somebody be inbounded, all the freight and it
13 would be your personal scanner or you might grab
14 another driver's scanner, they didn't always have
15 numbers on them, then you get out you go to punch
16 in your information, and I got somebody else
17 scanner. Then the girls would get mad, Geez,
18 Jimmy everything you wanted delivered was on the
19 418, looks like they're missing until they find
20 them under the other routes.

21 It still happens today, they won't
22 get the wrong scanner but punch in the wrong
23 route number and their information would go to
24 somebody else's route. It still happens. Nature

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1 of the business.

2 Q. Would it cause a headache for the
3 driver if they had the wrong scanner?

4 A. A bigger headache for the girls in the
5 office, they let you know you took the wrong
6 scanner.

7 Q. Beyond a headache, would there be any
8 other problem?

9 A. Yes, I mean, I'm sure they don't know
10 what you have on your truck, they think
11 everything is missing until it's delivered. Back
12 then, if you had hots in there what you did back
13 then is you punch in, if I wanted to say the IRS
14 in North Andover there would be 300 packages, I
15 couldn't scan every piece it would be too time
16 consuming so I punch in a hot code it would be
17 IRS-AND for Andover, I'd scan them all and when I
18 got to Andover, I would press "Special Customer"
19 and it would come up IRS-AND. Then all of sudden
20 the scanner would go 89 pieces, I didn't have to
21 scan them, then I just drop them off and the guy
22 would scan it. Dump the scanner sometimes you
23 have a printout, you punch the scanner if it's
24 not your scanner, the hot code isn't in there.

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1 So, yes, it could cause problems, yes.

2 Q. Any of those problems result in
3 discipline for the driver?

4 A. Not just for having it, but things
5 could come up that cause the problem – you
6 wouldn't get disciplined just for the sake of
7 taking the wrong scanner everytime, but everyone
8 for a while, say, there is a piece they can't
9 find right away then, yes, a circumstance could
10 come out of it that cause discipline but not just
11 by taking the wrong scanner.

12 Q. Could you observe the kind of
13 relationship that Paul Pizzuto had with Steve
14 Crossken?

15 MR. PERLMAN: Objection.

16 A. Steve Crossken, yes, not a very good
17 relationship. Steve Crossken seemed to have it
18 out for Paul, and Paul seemed to be paranoid that
19 he had it out for him. Paul would re-scan
20 everything, They're out to fire me. It wasn't a
21 good relationship. Steve took it upon himself to
22 come out and micromanage. We have station
23 supervisor Corey, only see him come out of his
24 office to talk to the supes but he's never taken

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1 out on himself since he's taken over the station
2 to be hands on with the driver. He delegate
3 authority to the next in charge and that's how it
4 goes. If you actually get to the point of being
5 fired, of course, you're in his office. As far
6 as out in the work area, the authorities
7 delegated where you're supposed to be, but Steve
8 Crossken actually micromanaged Paul himself.

9 Q. What about Arthur Leveris?

10 A. Arthur Leveris was on Paul
11 constantly.

12 Q. What about Joe Hamilton when he took
13 over?

14 A. Yes, not as bad of Steve Crossken. He
15 was on Paul, and I think – well, I can't say for
16 sure, Art Leveris was Steve Crossken number two
17 guy and he was Joe Hamilton's number two guy, so
18 it was business as usual, you could say.

19 Q. Do you recall at some point in October
20 of '02 through sometime in early 2003 that Paul
21 was out on a leave of absence?

22 A. Yes.

23 Q. Did you have any idea what his
24 condition was that caused that?

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1 some guys wouldn't trust each other. I wouldn't
 2 leave my scanner on the back of my truck if I had
 3 to do scanning because I would be too afraid
 4 somebody would scan a package with my scanner and
 5 put it in their truck. Later on manager, Jimmy,
 6 where is that Del computer? You scanned it. I
 7 scanned so many packages in the morning maybe I
 8 did, maybe I didn't, I don't know where it is.
 9 Always keep my scanner with me so nobody would
 10 take it. With the cameras I don't worry because
 11 they're going to go over and see somebody take my
 12 scanner. It's more relaxed now.

13 Q. When you said before that Paul was
 14 paranoid about getting fired for various reasons,
 15 what do you mean by paranoid?

16 A. I don't know all the particulars I was
 17 in the Lowell run and he was the Methuen run and
 18 our runs kind of overlap on the Methuen/Lowell
 19 line. They would give me a couple of his
 20 Methuens every now and then, P1s, early 10:30
 21 service that he couldn't make. I see him every
 22 now and then coming back, and I don't know all
 23 the particulars, I got my own problems, there was
 24 a package missing, and he couldn't find it and

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1 they accused him of maybe taking it or not
 2 knowing where it was. He ended up finding it,
 3 researching it and calling the customers, huge,
 4 huge -- then after it he was, I know they came
 5 out on any route and took that package.

6 Stuff happens that another route
 7 driver will see it, pick it up thinking it's a
 8 shipment going out, grab it by mistake when you
 9 just delivered it. Sometimes it got two labels.
 10 There are so many scenarios that could happen,
 11 but he seemed to think that somebody did it on
 12 purpose. I don't know what the particulars are
 13 on that one particular package, but there was
 14 something with the customers and a package was
 15 missing off his truck or something.

16 Q. With regard the processing at the
 17 plant, was there some issue with regard to
 18 multiple bar code that the drivers had to deal
 19 with?

20 A. We deal with that still today. The
 21 scanners we have now possibly worse than what we
 22 have. Sometimes I get a box and it would be an
 23 old UPS sticker on it, they're returns or
 24 whatever and they use the boxes more than one

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1 time, maybe 2 Airborne stickers because they
 2 shipped it with Airborne Express four or five
 3 times and they didn't take them all off or cross
 4 them out, and in the international paperwork
 5 comes with a bar code and there would be an
 6 Airborne Express bar code and yes, a lot of times
 7 you'd scan the wrong bar code by mistake.

8 Q. What problem would that cause?

9 A. The package either looked like I didn't
 10 scan it out, and it all depends which one I
 11 scanned when I delivered it. I could scan the
 12 right one the wrong one and deliver it and look
 13 like it is missing. Now they think the package
 14 is stolen so they call the customer find out who
 15 delivered, then they want to know why they didn't
 16 get a signature.

17 Or I could scan the wrong one in
 18 the morning, then it looks like I don't have on
 19 the route for a delivery scan and because I
 20 scanned the right one when I delivered it. Or I
 21 could scan the wrong one on both ends, and they
 22 don't know if the package is in the building or
 23 being delivered or anything. So I mean that was
 24 kind of some of the things that could happen

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1 Q. Would drivers be disciplined for
 2 that?

3 A. Again, depending on who the drivers
 4 were.

5 Q. Were there any particular accounts that
 6 were more troublesome?

7 A. Yes, they have what they call "hot
 8 accounts" like IBM was very, I would say,
 9 monitored. Del was another big account that
 10 would be monitored AT&T. IBM houses had to be
 11 done by noon businesses by nine o'clock, nine
 12 o'clock the AT&T was ten o'clock, they've had
 13 different services for big giant corporate
 14 accounts.

15 Q. At some point in time, were you aware
 16 that Paul Pizzuto was being called for a drug and
 17 alcohol test?

18 A. I most certainly was because apparently
 19 they had asked him to go with driver Mike Rae and
 20 he refused Mike Rae and requested that I go with
 21 him because he wanted somebody he could trust, he
 22 said. So the supervisor came and got me and he
 23 asked me if I would go down and accompany Paul
 24 Pizzuto as his union representative to a drug

<p style="text-align: right;">Page 29</p> <p>1 test.</p> <p>2 Q. Was that in approximately July 2003?</p> <p>3 A. Probably around there.</p> <p>4 Q. Do you know the supervisor that asked</p> <p>5 you to get involve?</p> <p>6 A. I don't remember. I know I went down</p> <p>7 with Art Leveris and Joe Hamilton. We drove Art</p> <p>8 Leveris Toyota truck and me Paul sat in the back</p> <p>9 seat.</p> <p>10 Q. Do you know who was calling for the</p> <p>11 drug and alcohol test at that time?</p> <p>12 A. At the time when we went down, it was</p> <p>13 one of the supervisor taken for probable cause.</p> <p>14 Q. What was the probable cause?</p> <p>15 MR. PERLMAN: Objection.</p> <p>16 A. I asked several times on the way.</p> <p>17 Neither one would answer me. Can you tell me</p> <p>18 what the probable cause? I was no longer in the</p> <p>19 steward capacity when I went with him, but I</p> <p>20 asked them, Could you tell us what the probable</p> <p>21 cause is? Is he slurring his words? Is he</p> <p>22 stumbling around is he falling asleep on the</p> <p>23 belt? And neither one would give me the answer</p> <p>24 to the probable cause. I will say this, that</p>	<p style="text-align: right;">Page 31</p> <p>1 words, unsteadiness, falling asleep, anything</p> <p>2 typical of somebody being under the influence of</p> <p>3 alcohol and drugs; it's probable cause. I have</p> <p>4 to look at you and say, I think he's under the</p> <p>5 influence of alcohol or drugs.</p> <p>6 Q. Who did you ask concerning whether they</p> <p>7 had probable cause?</p> <p>8 A. I asked Joe Hamilton and Art Leveris in</p> <p>9 Art Leveris' motor vehicle.</p> <p>10 Q. Did they respond to you at all?</p> <p>11 A. No. No response whatsoever. Nothing.</p> <p>12 Didn't even answer me.</p> <p>13 Q. Did you go down to the clinic?</p> <p>14 A. Yes. In Stoneham.</p> <p>15 Q. And what occurred when you got there?</p> <p>16 A. We got to the clinic, we sat down and</p> <p>17 Paul went in and signed in, at that time he</p> <p>18 started making a statement in front of Art</p> <p>19 Leveris and Joe Hamilton, I want, you know, I</p> <p>20 don't want DHL to touch my urine sample. I want</p> <p>21 you to ship it with UPS or FedEx because I don't</p> <p>22 trust these people. There were other customers,</p> <p>23 patients sitting in the room, at which time Art</p> <p>24 Leveris and Joe Hamilton started laughing</p>
<p style="text-align: right;">Page 30</p> <p>1 morning when he worked, we didn't go down for the</p> <p>2 drug test until a replacement came and they</p> <p>3 allowed him to work the machinery on the belt and</p> <p>4 jockey and move his truck in and out of position</p> <p>5 while loading it until his replacement arrived,</p> <p>6 and upon his replacement arriving, they then sent</p> <p>7 him down for the drug test.</p> <p>8 In my opinion, if I thought you're</p> <p>9 under drugs and I thought you could endanger</p> <p>10 yourself or any of the workers around you, I</p> <p>11 would not allow you to work the sort, or move</p> <p>12 your truck. You would sit in the breakroom until</p> <p>13 the sort was over, then you go for the drug test,</p> <p>14 you wouldn't work the machinery and then go.</p> <p>15 Q. Did Paul Pizzuto appear at times to be</p> <p>16 under the influence of drugs or alcohol?</p> <p>17 A. No. He appeared to be very agitated</p> <p>18 that everyone suggest that.</p> <p>19 Q. What was your understanding at the time</p> <p>20 of how the company could do a probable cause drug</p> <p>21 test?</p> <p>22 MR. PERLMAN: Objection.</p> <p>23 A. From the union contract, there had to</p> <p>24 be probable cause, which would be slurring your</p>	<p style="text-align: right;">Page 32</p> <p>1 thinking though it was funny that he wanted</p> <p>2 another carrier, they weren't to touch his</p> <p>3 sample.</p> <p>4 He went in and I sat out there</p> <p>5 with him and all of sudden he come out, Jimmy, do</p> <p>6 you have any money on you? No, I don't. Could</p> <p>7 you get me some money? I want to have my sample</p> <p>8 tested right here before it leaves this place</p> <p>9 right now in front of me. I said to Joe Hamilton</p> <p>10 because he was in charge, is it all right if I go</p> <p>11 down get \$60 for Paul. He said, Sure.</p> <p>12 So I walked next door and took \$60</p> <p>13 from the ATM, I paid for his sample. He came out</p> <p>14 little while later waving his sample like this,</p> <p>15 See, I'm not on nothing, and we proceeded back to</p> <p>16 the station and they were told we'll wait until</p> <p>17 your sample comes back.</p> <p>18 What happened to Paul, he was out</p> <p>19 of service because it had to go to testing</p> <p>20 laboratory, he must have had a split sample or</p> <p>21 whatever but they still had to wait until the</p> <p>22 official result came back from there, a</p> <p>23 laboratory where they send it.</p> <p>24 Q. When you were at the clinic, did you</p>

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1 observe Paul drinking some excessive amounts of
2 water?

3 **A. No. Probably had one or two glasses**
4 **then he went in right away.**

5 **Q. Did you observe any other behavior Paul**
6 **Pizzuto at the time you haven't already**
7 **described?**

8 **A. No. He was just fuming until he went**
9 **in and that's when he started with the girl at**
10 **the desk, he didn't want them to touch his sample**
11 **and I want FedEx or UPS touch it, that's when**
12 **they started laughing, then that's when came out**
13 **asking me for money, he was going to get his own**
14 **test done on the spot.**

15 **Q. Did he consider at the time Paul's**
16 **fuming to be made something to rational or**
17 **unusual?**

18 **A. No. We all get discipline to think**
19 **we're wrong, we're all fuming. If you don't get**
20 **mad, you're a liar. He was upset.**

21 **Q. Was there anything particular about the**
22 **drug and alcohol test?**

23 **A. First probable cause that I have been**
24 **on in my 20 years at the North Station anyway, up**

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1 **until that time a lot of random tests but this**
2 **was the first one that I know that pulled out of**
3 **service for a drug test. I think we might have**
4 **had one for alcohol, but I think the guy was**
5 **drunk in the building, but we never had anybody**
6 **that I knew.**

7 **Q. Was it generally known among the**
8 **drivers that Paul had been taken out for these**
9 **tests?**

10 **A. Absolutely. They have to replace you**
11 **so the minute, Where is Paul, Paul went down as a**
12 **new guy on his route. Two guys next to you and**
13 **three guys across from you, when they pull you**
14 **out, like I say I worked with 300 old ladies that**
15 **have nothing else to do, any excitement they got,**
16 **you whisper a secret to one driver, before you**
17 **get home your wife knows about it.**

18 **Q. Did you observe Paul Pizzuto make any**
19 **threats at the time to any supervisor?**

20 **A. I never observed Paul Pizzuto in a**
21 **threatening manner in any way. He wasn't that**
22 **type of kid. He always had to have the last**
23 **word, if he felt he right he was going to argue**
24 **his point up and down. The day we left, we were**

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1 **sitting on the stairs waiting for Art Leveris to**
2 **come out with his car keys, and when he did, he**
3 **said to Art Leveris, he said, Let me tell you,**
4 **when this is said and done, the police are going**
5 **to get you. Art Leveris said, Is that a threat?**
6 **He said, No, that is not a threat, the police are**
7 **going to get you. That's all I ever heard him**
8 **say. He felt it was illegal what they were**
9 **doing. It wasn't illegal, but he felt it was and**
10 **he thought they were going to be arrested for**
11 **what they were doing.**

12 **Q. Did those words appear to be a threat**
13 **to you?**

14 **A. No. Just appeared to be unfound that's**
15 **why, would you say the police, the police can't**
16 **do anything. It is a union matter. That's how I**
17 **felt about it at the time.**

18 **Q. At any other time while you observed**
19 **Paul Pizzuto, did you ever see him threatened in**
20 **any way any supervisor or manager?**

21 **A. Paul wasn't an opposing kid, he wasn't**
22 **a threatening kid. Paul is as big as a pint of**
23 **ice cream. That wasn't him. He would argue, he**
24 **could be argumentative, if he thought he was**

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1 **right he would argue his cause. If he thought**
2 **the sky was pink from the end of your life no**
3 **matter how much you showed him or proved to him**
4 **it wasn't.**

5 **Q. Did it appear to you at any time that**
6 **any of the supervisors or managers at Airborne**
7 **were afraid of Paul?**

8 **MR. PERLMAN: Objection.**

9 **A. No, I don't think they were afraid.**
10 **For number one, when we drove down for the drug**
11 **test, Art Leveris let him sit right behind him on**
12 **the rear seat. If I was afraid of somebody, I**
13 **certainly wouldn't be driving with him in the**
14 **rear seat of my car, bop me over the head.**
15 **Number 2 if I thought he was afraid to hurt**
16 **somebody or himself, I wouldn't let him continue**
17 **to move his truck in the building and handle**
18 **machinery so, no, I don't think anybody was ever**
19 **afraid of Paul by no means.**

20 **Q. Did you follow-up with managers with**
21 **regards to what the probable cause was for Paul's**
22 **drug and alcohol test?**

23 **A. Yes. The following day I asked**
24 **supervisor Chris Steadmans, Can you tell me why**

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1 he sent Paul down there, Artie and Joe Hamilton
2 wouldn't tell me, and I asked driver Mike Rae
3 stand with me so he could hear the reason, and
4 Chris Steadmans told me, The day before Paul
5 re-scanned his whole truck when everybody left
6 the building and left here 40 minutes late and
7 didn't make service and that's why they took him
8 down for probable cause the following day. I
9 said, That's no reason for probable cause, that's
10 reason for discipline, if anything, but not just
11 because somebody re-scans his whole truck doesn't
12 mean he's on drugs and you do it the day later or
13 you pull him out of service the day before, but
14 that was when Chris Steadmans told me and driver
15 Mike Rae.

16 Q. Was there any other reason given?

17 A. No, that's all he told me, nothing
18 else.

19 Q. Was there a usual procedure that
20 management would follow if somebody, the driver,
21 was acting in a threatening way?

22 MR. PERLMAN: Objection.

23 A. Over my years, I've seen some
24 supervisors actually threatened by drivers,

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1 A. No, not with all the drivers, just with
2 the drivers who were habitually late. Wayne Fox,
3 late all the time, drove up the ramp looks like
4 he was going to a baseball game, he'd show up,
5 punch in, go out and park his car and get dressed
6 the whole ritual. Over the years in the other
7 building we'd park motorcycles in the building,
8 on Saturdays we have supervisors drive their car
9 in and wash them, so, yes, people have driven in
10 not driven right in the whole building, depends
11 on how late you are. Me, myself, if I'm like
12 borderline, I got a minute or two, run up, run in
13 in get out. If I'm a minute, if you're a minute
14 you drive all the way up to the top of the ramp,
15 it depends how late.

16 At the time they were disciplining
17 us for being late, if you were one minute late,
18 and I argued that out with management, Every
19 other company has a grace period. I'm not saying
20 I can be ten minutes late, I understand this is a
21 time-sensitive business, but up to three or four
22 minutes. I could come into the building at 6:45
23 when I'm supposed to be there and have nine guys
24 in front of me waiting to punch in. By the time

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1 either beat them up or whatever, the drivers have
2 either been escorted off the building by the
3 police and the supervisors have gone down and
4 filed police reports on the drivers. That was if
5 you threaten a driver, that's generally what was
6 going to happen, file a police report have you
7 escorted off the property, then it was a union
8 issue to get your job back.

9 Q. As far as you know, was Paul Pizzuto
10 escorted off the property by the police?

11 A. No -- I don't remember but I couldn't
12 tell you for positive. I don't remember the date
13 that he was actually fired. I don't think I was
14 there that day, so I couldn't tell you if he was
15 escorted off that day. Up until then, no, I'd
16 never seen him, but I wasn't there the day he was
17 actually fired.

18 Q. You're aware there is some sort of
19 issue involving Paul Pizzuto and driving his car
20 up onto the ramp?

21 MR. PERLMAN: Objection.

22 A. Uh-huh.

23 Q. Was there a practice among the drivers
24 with regard to driving up and punching in?

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1 I get up to the clock it's 6:48 and now I'm being
2 disciplined. If you're 6:46 you were disciplined
3 that is why some of the guys pulled there. A lot
4 of guys -- there would be 20 guys mulling around
5 because we'd have guys get there 40 minutes
6 early, hang out right at the ramp. Another group
7 of guys, ten of them will hang out in the break
8 room. The bulletin boards are there where the
9 time clock is and that's where they all hang out.
10 Drinking their coffee, and the late guys, some of
11 the them will pull up, not on a daily basis but
12 once a week, twice a week, someone pulls up and
13 it's generally all the same drivers who got tardy
14 issues.

15 Q. Have you done that yourself?

16 A. Yes, not that much though.

17 Q. Have you seen others do it?

18 A. Yes.

19 Q. You said depending on circumstances,
20 drivers would either be on the bottom of the ramp
21 or pull up the ramp?

22 A. Yes. If I got time, I can walk up.

23 You have to be quick, if a supervisor caught you
24 pulling up, run in and punching out and parking

<p style="text-align: right;">Page 45</p> <p>1 If you don't go in there, you come on the other</p> <p>2 side of that door is the time clock and company</p> <p>3 bulletin board.</p> <p>4 Q. Approximately how many feet, if you can</p> <p>5 estimate?</p> <p>6 A. From the ramp?</p> <p>7 Q. From the ramp to the time clock?</p> <p>8 A. Twenty feet.</p> <p>9 Q. Once you go up the ramp and before you</p> <p>10 get to where the belts are, is there some sort of</p> <p>11 table that's normally there?</p> <p>12 A. Yes, like right around here, there is a</p> <p>13 table because they do -- the international is</p> <p>14 processed at nighttime so there is a table there.</p> <p>15 It's a tight squeeze for these trucks, you have</p> <p>16 to squeeze through the table, like a metal just a</p> <p>17 metal table and they process the international</p> <p>18 and the hazardous materials.</p> <p>19 Q. Would you mind drawing on your diagram</p> <p>20 the approximate location of the table?</p> <p>21 A. The table is moved, from time to time,</p> <p>22 depends on who moves them but anywhere from here</p> <p>23 or up here. I mean, they're portable, so they</p> <p>24 get moved around.</p>	<p style="text-align: right;">Page 47</p> <p>1 stuff, so it all depends on the availability of</p> <p>2 pulling up there.</p> <p>3 The guys will either pull here,</p> <p>4 drive up or pull up the ramp. Guys park their</p> <p>5 motorcycles on the side of the ramp. One guy</p> <p>6 that parks his car at the bottom of the ramp</p> <p>7 every day and he thinks it's a private parking</p> <p>8 spot</p> <p>9 Q. What is the furthest you've seen any of</p> <p>10 the drivers pull up?</p> <p>11 A. I've seen the driver pull right into</p> <p>12 the building.</p> <p>13 Q. Were they running late?</p> <p>14 MR. PERLMAN: Objection.</p> <p>15 A. Yes, when they are running late, I've</p> <p>16 seen them -- a supervisor pull his subaru and</p> <p>17 wash it.</p> <p>18 Q. Normally in this area at the beginning</p> <p>19 of the shift as you've been describing when</p> <p>20 people might be pulling into --</p> <p>21 A. That doesn't happen every day. It</p> <p>22 hasn't happened as much now because they're not</p> <p>23 bothering the guy about being a minute late. The</p> <p>24 discipline what they focus on goes in spurts. At</p>
<p style="text-align: right;">Page 46</p> <p>1 Q. Can you put in one of the rectangles</p> <p>2 you drew A and B?</p> <p>3 A. (Complies.)</p> <p>4 Q. A and B on the diagram is possible</p> <p>5 locations of the table?</p> <p>6 A. Yes.</p> <p>7 Q. When a driver is running late as you</p> <p>8 described already, would they go up the ramp?</p> <p>9 A. Some would, some wouldn't. It depends</p> <p>10 if there's a truck sitting sometimes, it could be</p> <p>11 a van sitting there with nobody in it. You could</p> <p>12 open the door and there could be a truck pulled</p> <p>13 in that you can't get up so they park at the</p> <p>14 bottom. If there is nothing in there, you can</p> <p>15 pull your nose in a little bit run in and back</p> <p>16 out and get out of there.</p> <p>17 Q. Nose into what?</p> <p>18 A. Into the building a little bit, when</p> <p>19 that door opened, anything could be there.</p> <p>20 Sometimes you go up the ramp and there will be a</p> <p>21 truck backed in from the airport with freight on</p> <p>22 it so you couldn't pull in. Sometimes guys will</p> <p>23 pull up with the trucks, they forget something,</p> <p>24 leave the van there, they walk in to get their</p>	<p style="text-align: right;">Page 48</p> <p>1 one point they're focussing on the tardiness</p> <p>2 became an issue, so the guy were doing it more</p> <p>3 prevelently than they are now. Now, no one is</p> <p>4 saying anything they start cracking down on the</p> <p>5 tardiness the guys will be pulling in the ramp</p> <p>6 again.</p> <p>7 Q. Would there normally be supervisors in</p> <p>8 that area when people would be doing this pulling</p> <p>9 into to punch in?</p> <p>10 MR. PERLMAN: Objection.</p> <p>11 A. Now and then, if they are having a</p> <p>12 cigarette. A lot of supervisors would come out</p> <p>13 and stand in the corner, pull in and have a</p> <p>14 cigarette because they are not suppose to smoke</p> <p>15 in the building so they smoke as close to in the</p> <p>16 building they can, so sometimes they will be</p> <p>17 sitting there having a cigarette.</p> <p>18 Q. Is it fair to say that normally the</p> <p>19 supervisors would not be there at that time?</p> <p>20 A. No, because we start -- we have an</p> <p>21 earlier start, there's stuff going on, even</p> <p>22 though the majority of us haven't started work so</p> <p>23 the supervisors they have jobs, they're not</p> <p>24 sitting waiting to go to work like us, they've</p>

Page 1	Page 3
<p style="text-align: center;">Volume I Pages 1-76 UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS</p> <p style="text-align: center;">Docket No. 04-12492-GAO</p> <p>PAUL PIZZUTO, Plaintiff, vs.</p> <p>AIRBORNE EXPRESS, INC., STEVEN CROSSKEN, JOSEPH HAMILTON, GREG SWEATT and ARTHUR LEVERIS, Defendants.</p> <p>DEPOSITION OF JAMES S. SAMBATARO, called as a witness by counsel for the Plaintiff, pursuant to the applicable provisions of the Federal Rules of Civil Procedure, before Jennifer A. Doherty, CSR No. 1398F95 and Notary Public in and for the Commonwealth of Massachusetts, taken at the offices of Richard A. Mulhearn, 41 Elm Street, Worcester, Massachusetts on Thursday, June 14, 2007 commencing at 10:05 a.m.</p> <p>*****</p> <p>FLYNN REPORTING ASSOCIATES Professional Court Reporters One Exchange Place Worcester, Massachusetts 01608 (508) 755-1303 * (617) 536-2727 TOLL FREE: (888) 244-8858 FAX: (508) 752-4611</p>	<p style="text-align: center;">INDEX</p> <p>1</p> <p>2 Testimony of: Direct Cross Redirect Recross</p> <p>3 JAMES S. SAMBATARO</p> <p style="padding-left: 40px;">by Mr. Mulhearn 4 72</p> <p style="padding-left: 40px;">by Mr. Perlman 44</p> <p>5</p> <p>6</p> <p style="text-align: center;">EXHIBITS</p> <p>7 No. Description For I.D.</p> <p>8 61 Diagram 57</p> <p>9 62 Document 64</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p style="text-align: center;">**EXHIBITS RETAINED BY ATTORNEY MULHEARN**</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2 BY: Richard Mulhearn, Esq.</p> <p>3 41 Elm Street</p> <p>4 Worcester, Massachusetts</p> <p>5 For the Plaintiff.</p> <p>6</p> <p>7 SULLIVAN, WEINSTEIN & McQUAY, P.C.</p> <p>8 BY: C. Max Perlman, Esq.</p> <p>9 2 Park Plaza</p> <p>10 Boston, Massachusetts 02116</p> <p>11 617-348-4300</p> <p>12 max@swmlawyers.com</p> <p>13 For the Defendants.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: center;">Exhibit 5</p>	<p style="text-align: center;">PROCEEDINGS</p> <p style="text-align: center;">STIPULATIONS</p> <p>1 It is stipulated by and between counsel</p> <p>2 for the respective parties that the deposition</p> <p>3 transcript will be read and signed by the</p> <p>4 deponent within thirty (30) days of receipt of</p> <p>5 transcript under the pains and penalties of</p> <p>6 perjury. The filing and the notarization are</p> <p>7 hereby waived.</p> <p>8 JAMES S. SAMBATARO, having been</p> <p>9 satisfactorily identified and duly sworn by the</p> <p>10 Notary Public was examined and testified as</p> <p>11 follows:</p> <p>12</p> <p>13</p> <p style="text-align: center;">DIRECT EXAMINATION</p> <p>14 BY MR. MULHEARN:</p> <p>15 Q. Could you state your full name for the</p> <p>16 record?</p> <p>17</p> <p>18 A. James S. Sambataro.</p> <p>19 Q. Spell your last name.</p> <p>20 A. S-A-M-B-A-T-A-R-O.</p> <p>21 Q. And where do you live, Mr. Sambataro?</p> <p>22 A. The address is 26 Golden Oaks Drive,</p> <p>23 Salem, New Hampshire.</p> <p>24 Q. Do you have any plans on moving in the</p>

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1 It wasn't pleasant or positive, it went downhill
 2 from there. And there was a lot of immature
 3 incidents where I would feed the fire and I'm not
 4 if you want I can go into details, childish
 5 things that I wasn't proud of, it was horsing
 6 around and only because he never treated me with
 7 respect from day one. Supervisors that do treat
 8 me with respect, I treat with respect back. They
 9 treat me like Artie did that first day, I'm not
 10 cooperative. it wasn't a good relationship and
 11 that lasted probably a year until Joe Hamilton
 12 replaced Steve Crossken.

13 There was an incident where I did
 14 something childish and Joe brought to my
 15 attention, Look, Jim, I don't have time for this
 16 stupid stuff, I have bigger fish to fry. Do me a
 17 favor, work it out with Artie. There was no
 18 union involved or anything. I did it man to man
 19 to Artie. I apologized, he accepted, and we got
 20 along fine from then on.

21 Q. Can you put that in time as to when
 22 that might have been?

23 A. Was it 2002 to about 2003 because it
 24 seemed -- if I can back up, if I can give you an

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1 analogy what I think a manager should be. My
 2 wife is a nurse office manager and she's in
 3 charge of maybe a dozen nurses. When there is a
 4 new policy for nurses, sometimes it ruffles their
 5 feathers so she's learned how to treat each one
 6 individually; she approaches the same task
 7 different to different nurses knowing how they
 8 are going to react. That doesn't happen with
 9 some of the supervisors at Airborne and DHL. It
 10 has gotten better.

11 I'm bringing that up because Artie
 12 told me, Jim, I had a lot to learn about being a
 13 manager and I understand your frustration at the
 14 beginning and he learned a lot. Steve Crossken,
 15 I never had respect for him; I don't have any
 16 respect for him now. He went out of his way to
 17 push a button. I don't know if he's with the
 18 company anymore.

19 Let's see, from my time at UPS and
 20 Airborne DHL I never had a problem with
 21 insubordination until Steve Crossken and I were
 22 working as a team at the beginning of 2002. I
 23 found out later part of the reason was, I
 24 mentioned earlier, there was a theft issue with

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1 Dell computers, and they didn't find out until
 2 2003.

3 There was a mechanic, he started
 4 four, five in the morning, and they caught him
 5 stealing the packages; he was the culprit not the
 6 drivers, so we never got a, Sorry guys, sorry for
 7 all the frustration over the past year. That was
 8 kind of the climate in the building, and there
 9 was a lot of friction from Steve Crossken and
 10 Artie working as a team together.

11 Q. What was Artie like as a manager?

12 A. At the beginning he was a pain in the
 13 ass, there is no other diplomatic way to put it.
 14 He would go out of your way to push your buttons
 15 and I saw for a few other drivers. I seen that
 16 at UPS there are certain drivers for whatever
 17 reason there is always friction and stuff, and I
 18 feel as long as you're doing your job, it
 19 shouldn't be on your ass, and they were on my ass
 20 for stupid things, and it was uncomfortable
 21 working there at the time.

22 Q. Did you observe the way that Paul
 23 Pizzuto was treated by either Crossken, Hamilton,
 24 or Leveris?

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1 A. Yes. We have lot of time-sensitive
 2 probative accounts like Dell, Xerox, IBM that
 3 they have to be delivered my 9:30, 10:30 and most
 4 of them by twelve. That's our job, you got to
 5 service the customer. They were always on Paul.
 6 They would say, If you need help, let your
 7 supervisor know.

8 So certain drivers, including
 9 Paul, let the supervisor know and they would say,
 10 We don't have anybody, do the best you can. you
 11 do the best you can and we call them failures,
 12 when the time commitment isn't met. The next day
 13 depending on who the driver is they're in your
 14 face, Why did you screw up? How could you have a
 15 failure, why didn't you tell us. Well, I told
 16 you before I left but you said you had nobody, do
 17 the best I can, that's a small example of what
 18 went on a daily basis with Paul and other
 19 drivers, where there was service issues, leaving
 20 the building too late, staying out there too
 21 late, you didn't make service. That's pretty
 22 much how all this role in why we're here now.
 23 There is no respect, no communication, you know,
 24 just feeding the fire back and forth. Paul is a

<p style="text-align: right;">Page 17</p> <p>1 great guy. Everyone I work with, they will do 2 anything for you, you know, the union, they help 3 their brothers, so to speak, and there is a lot 4 of horseplay a lot of swearing, not as much as 5 before because we have female workers now, it's 6 toned down a bit. There is off-color humor. 7 There's always yelling, just normal. It doesn't 8 mean that people are upset as far as personally, 9 they just want to get the job done and depending 10 on the situation a lot of things shouldn't have 11 been said in the heat of the moment or the 12 argument. Just trying to give you a picture of 13 what the environment was then.</p> <p>14 Q. Was Paul Pizzuto treated any 15 differently than other drivers?</p> <p>16 A. Only because he was three or four 17 trucks down from me. I heard it at least once or 18 twice a week, they would be on them. That's not 19 to say the other belt, the Beverly side, I just 20 kind of saw -- I didn't want to know much 21 politics. It really wasn't any of my business 22 what went on. The two or three hours -- I want 23 to get my freight, get the job done and get back. 24 While I'm doing that when you hear</p>	<p style="text-align: right;">Page 19</p> <p>1 A. He responded as everybody else did 2 being questioned by the service. It was always 3 loud most of the time.</p> <p>4 Q. Let me ask you a few questions about 5 that. Loud meaning what?</p> <p>6 A. Let's see, loud like, I was trying to 7 do the right thing, can't you see I was trying to 8 do the right thing. Why are you on my ass. I'm 9 not paraphrasing Paul. I'm not saying -- it was 10 passionate about his job and they going against 11 it. It was that level.</p> <p>12 Q. Just for the record, since they can't 13 get the increase of volume, there would be raised 14 voices?</p> <p>15 A. Yes.</p> <p>16 Q. Both sides, driver and manager?</p> <p>17 A. Pretty much. I never really analyzed 18 but it was loud.</p> <p>19 Q. Let me ask you some questions about the 20 scanning process, accountability for freight. 21 Was it important for a driver to properly scan an 22 account for his freight?</p> <p>23 A. Yes.</p> <p>24 Q. Can you describe why that would be</p>
<p style="text-align: right;">Page 18</p> <p>1 what's going on on either side of you you can't 2 help but notice it. Paul, and Bill Pickman are 3 always on him, Hurry up, get out of here, what 4 are you doing?</p> <p>5 Q. Can you put any faces on those people 6 that were saying that?</p> <p>7 A. Coincidentally, he's our new manager in 8 the building; he took over Joe Hamilton's 9 position. His name is Corey Billidoux. He's a 10 great guy and at that time he was a manager, our 11 belt manager, and I think he was our manager for 12 a while. He talked to Paul.</p> <p>13 Then when it gets past that point 14 when there's a problem that's not resolved on the 15 route, that's when they bring it to the office, 16 and I know Paul was called in with a shop steward 17 and I don't know what was said at those times. 18 It was work-related as far as service related.</p> <p>19 Q. Did Paul Pizzuto respond any 20 differently to what other managers were doing 21 than other drivers -- strike that.</p> <p>22 How did Paul Pizzuto respond at 23 the times you observed him being treated that 24 way?</p>	<p style="text-align: right;">Page 20</p> <p>1 important?</p> <p>2 A. It's a bar code and it got a laser 3 scanner and it takes the information and before 4 you leave the building, you dump the scanner and 5 it sucks out all the information, so all the 6 clerks have the information so if a customer 7 calls wondering where their IBM product is, they 8 can go into the computer and say, So and so 9 driver left the building at 8:40, it's on route 10 to you. Give the customer an answer, that's a 11 way of knowing how to find that out.</p> <p>12 Q. That would come from the driver 13 scanning the pieces on his truck?</p> <p>14 A. Yes. When it comes from loading from 15 the plane, there is a team that scans the freight 16 in the building. They have to scan, then they 17 have another scan when the driver scans it to his 18 vehicle, then they have when -- you punch in when 19 you leave the building. They'll have, So and so 20 scanned that package and he left the building at 21 8:40. You should have it by twelve. They know 22 it's on the way.</p> <p>23 Q. Once the driver has scanned the freight 24 that's on his truck, he would bring the scanner</p>

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1 help. That's not the case in Paul. Yes, he's a
2 smart ass, wise ass only when they press the
3 button, that's how he reacts, but as far as him
4 looking like he's stoned or under the influence
5 or drunk, I never saw it in Paul at all.

6 Like I said, there was plenty of
7 support there if there was the case because
8 drivers, they watch out for another and they
9 don't want them going out on the road driving,
10 hurting somebody.

11 There is a support through the
12 union and a few times that -- I've seen that
13 happen a few times, other drivers, you can tell,
14 it's pretty obvious they were messed up.

15 Q. You never observed that in Paul?

16 A. No, never.

17 Q. Were people drivers get written up for
18 being late?

19 A. Yes.

20 Q. How late would you have to be before
21 you got written up?

22 A. It depends. It's different for
23 everybody. It really is. I've got written up
24 for being a minute late in a snowstorm and other

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1 people don't get written up. They don't really
2 enforce it. I don't know. I heard different
3 things. I don't know if there's a book that says
4 it. You can ask the same question to three
5 different supervisors and they'll give you three
6 different answers. One minute, two minutes, three
7 minutes, it really depends on -- I actually got a
8 warning letter for being five minutes late when
9 the plane was an hour late. They were just
10 trying prove a point. I didn't really care. I
11 forget what the reason was, there was a problem
12 at home, one of my kids, maybe getting a late
13 start, I got there on time but I found out the
14 plane was late. So, What is your point, why
15 can't you just say, Jim, next time we need you.
16 So I don't have an answer for that. It depends
17 on the supervisor the driver, the circumstances.
18 Some drivers live ten minutes away, they're late
19 every day, it's ridiculous. They enforce, they
20 say, Don't smoke in the building. They don't
21 enforce that. Guys smoke in the building. It
22 drives you crazy. To answer your question, I
23 don't really have an answer.

24 Q. Was there a time clock on the

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1 premises?

2 A. Yes.

3 Q. Where was that?

4 A. Upon entering the building, the
5 building in Stoneham facing the building, the
6 main entrance isn't kind of in the middle; then
7 to the left of that there's an overhead door
8 where the trucks enter and exit, when you go into
9 the entrance where the trucks enter, you take a
10 right, it maybe a little way, twenty feet, thirty
11 feet, there's a time clock right there.

12 Q. Is there a ramp at that location?

13 A. Yes, there is a ramp.

14 Q. Can you give me an estimate how long
15 the ramp is?

16 A. I'm really bad with distance and
17 math.

18 Q. Ball park?

19 A. Fifty feet, 60 feet.

20 Q. And approximately how wide is that
21 ramp?

22 A. Probably about ten feet, twelve feet
23 wide.

24 Q. Did you say that ramp is used --

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1 A. Yes, there another entrance on the
2 other side of the building but I would call it
3 the main entrance for the vehicles.

4 Q. Was there a practice at this plant with
5 regard if drivers were running late before their
6 shift of how they would clock in?

7 MR. PERLMAN: Objection.

8 A. Yes, that's another thing that they
9 didn't enforce depending on the supervisor. For
10 the most part, it happens every day. Somebody is
11 running late and they have a minute to spare and
12 there is the parking area might be full, they
13 might have to park a distance away, it might be a
14 two-minute walk. What they do is they drive up
15 to that -- I'm sorry, they drive up to that
16 overhead door where the trucks enter and exit and
17 they park there, run in, punch in, make it on
18 time, then they will park. You're not supposed
19 to do that. It's not enforced like nothing else
20 is enforced unless they want to bust your
21 balls.

22 Q. And are you aware of anybody who was
23 written up for that?

24 A. No.

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1 Q. Approximately how often was that
2 occurring?

3 A. Happens every day. Sometimes it's the
4 same people, like clockwork. This one guy he
5 lives 50 minutes away and he makes it by one
6 minute. It's amazing.

7 Q. Did you say they would drive up to the
8 overhead door area?

9 A. Yes, then they walk in, punch out, and
10 walk back out, get back in the vehicle, usually
11 leave it running.

12 Q. To do that, to drive up to the overhead
13 door, would you have to go up the ramp?

14 A. Yes.

15 Q. Direct your attention to July 25, 2003
16 were you in that ramp or time clock area on that
17 day in connection with Mr. Pizzuto?

18 MR. PERLMAN: Objection.

19 A. I know what incident you're referring
20 to. I don't know the exact date, but I wasn't
21 near the time clock which is near that ramp.

22 Q. What did you observe at that time?

23 A. What I observed was, I was talking to
24 other drivers, my back was towards the ramp and

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1 what I heard was a car come up, a lot of
2 laughing, Paul came by me – no, he didn't come
3 by me, I didn't see him punch in. I saw him pull
4 up and there was a lot of commotion, laughing,
5 and then I went, then I left, it was time to –
6 roll call, so to speak, and what I observed was I
7 think Artie was there yelling at him and he
8 was – my opinion he was looking at him, are you
9 serious are you crazy. I found out later that
10 Artie claims that he tried to run him over which
11 my back was towards it but I don't see that
12 happening. Paul wouldn't run a supervisor over,
13 and it isn't – I told you it's not uncommon for
14 drivers to do that, I mean Paul was being a smart
15 ass driver, yes, but he wasn't going to run
16 anybody over.

17 We have a night shift that use our
18 trucks, like the day drivers, they usually come
19 back between three and five. There is a second
20 shift between two and four that use those trucks
21 and when they come back in the between nine and
22 eleven; if those trucks aren't put back, that
23 supervisor gives that driver a key, sometimes
24 it's a pain in the ass, you come to work and your

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1 truck is not there, so I've seen drivers upset
2 enough that they come in, barrel-assing in, not
3 really thinking, just like pissed off, you really
4 can't drive fast because you can wreck the motor
5 up, but I've seen drivers drive in there faster
6 than what Paul drove in that day, I didn't
7 physically see him. I'm going by the sound of
8 the motor.

9 Q. Can you just describe the sound of his
10 motor?

11 A. To me, it doesn't sound like, sound
12 like somebody drove into the building, I just
13 know it didn't sound like a diesel truck, it
14 sounded like a foreign car, that's what made me
15 turn around. I usually see two or three or four
16 guys, Hey, it is Pizzuto and I forget if you got
17 out of the car to punch in. I think he didn't
18 make it that far that day. The day went on.
19 What I mean is it was 6:45 our time so we were
20 supposed to meet or in a certain area for our
21 morning meeting.

22 Q. Did you say that you saw some
23 interaction between Pizzuto and Leveris?

24 A. Yes, there was like I says, other

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1 instances it was common occurrence they were
2 always head butting. I really didn't stick
3 around to what was happening. They were arguing.
4 Then I found out that, you know, that it was
5 embellished that he was trying to – Paul was
6 trying to run Artie down, I don't buy that.

7 Q. Did you see, you said that when you
8 heard the engine, you turned around?

9 A. Yes.

10 Q. What was Paul doing at that time?

11 A. I forget if he was in the car or
12 outside the car.

13 Q. About how far away were you?

14 A. Forty feet.

15 Q. Did you have a clear view?

16 A. Yes.

17 Q. Did you see Art Leveris at that time?

18 A. Yes, he was in front of the hood.
19 Actually, there was a big metal table they use
20 for paperwork. I believe Artie was either on the
21 side of the table or in front of it, he was at
22 the corner of the table.

23 Q. Do you know what he was doing there?

24 A. I don't know if he was walking from

<p style="text-align: right;">Page 37</p> <p>1 somewhere. I never noticed him there because my</p> <p>2 back was toward the -- I don't know if he was</p> <p>3 working on the job and happened to walk by or he</p> <p>4 was at that table all the time.</p> <p>5 Q. Did Leveris at that point to you appear</p> <p>6 to look frightened or scared?</p> <p>7 A. No. He looked pissed off. He always</p> <p>8 looked like that. His nostrils were always</p> <p>9 flared, he looked like he was mad at the world</p> <p>10 all the time.</p> <p>11 Q. Do you know someone called Greg</p> <p>12 Sweatt?</p> <p>13 A. Yes.</p> <p>14 Q. Who is he there?</p> <p>15 A. Another supervisor.</p> <p>16 Q. Do you recall him being there at that</p> <p>17 time?</p> <p>18 A. I do.</p> <p>19 Q. Do you have any recollection as to</p> <p>20 where he was?</p> <p>21 A. I think he was with me at the time</p> <p>22 clock, he was in that same area, it was so long</p> <p>23 ago, I know he was there. I forgot exactly where</p> <p>24 in the crowd I remember seeing his face.</p>	<p style="text-align: right;">Page 39</p> <p>1 A. Other fellow drivers I couldn't name,</p> <p>2 they congregate in different areas. There was</p> <p>3 people around that metal table I was telling you</p> <p>4 about; that was where the commotion was coming</p> <p>5 from.</p> <p>6 Q. When you say "commotion," what do you</p> <p>7 mean?</p> <p>8 A. Boisterous laughter like, Hey, Pizzuto,</p> <p>9 knuckle head, what are you doing?</p> <p>10 Q. Did you understand what the laughter</p> <p>11 was about at the time?</p> <p>12 A. Yes, I did because Paul drove his car</p> <p>13 in. That was funny.</p> <p>14 Q. Did Mr. Leveris look amused?</p> <p>15 A. Not at all.</p> <p>16 Q. The way you described this metal</p> <p>17 table?</p> <p>18 A. It's taller than this. It's probably</p> <p>19 waist high on me. I'm six one, and it's about</p> <p>20 five feet wide. It has wheels.</p> <p>21 Q. I'm searching for a diagram. Let's see</p> <p>22 if you can relate to looking at Exhibit 55?</p> <p>23 MR. PERLMAN: Actually, I had Paul</p> <p>24 draw refer to the witness to change that at</p>
<p style="text-align: right;">Page 38</p> <p>1 Q. Was he over by Leveris?</p> <p>2 A. I'm not sure.</p> <p>3 Q. Did Greg Sweatt look scared or</p> <p>4 frightened to you?</p> <p>5 A. No. He was a good guy, good to me. I</p> <p>6 never saw him scold other drivers for anything.</p> <p>7 He always seemed to be level headed. He was more</p> <p>8 diplomatic to his drivers, and I remember he was</p> <p>9 in that area, I forget the circumstances.</p> <p>10 Q. Was there any interaction between Greg</p> <p>11 Sweatt and Pizzuto at that time?</p> <p>12 A. No.</p> <p>13 Q. Did you ever hear any of the</p> <p>14 supervisors either saying to you or somebody else</p> <p>15 or to themselves that they were afraid of Paul</p> <p>16 Pizzuto?</p> <p>17 A. No.</p> <p>18 Q. Did they ever look afraid of Paul</p> <p>19 Pizzuto?</p> <p>20 A. No.</p> <p>21 Q. You said when you drove in, there was</p> <p>22 commotion and laughter?</p> <p>23 A. Yes.</p> <p>24 Q. Who was the laughter coming from?</p>	<p style="text-align: right;">Page 40</p> <p>1 all.</p> <p>2 MR. MULHEARN: He doesn't have to</p> <p>3 touch it, just to see if he recognizes the area,</p> <p>4 you're not going to touch this.</p> <p>5 MR. PERLMAN: We don't want you to</p> <p>6 write on it. That's all.</p> <p>7 Q. Take a look at that as Exhibit 55, see</p> <p>8 if you can recognize the general --</p> <p>9 A. Yes.</p> <p>10 Q. -- layout there?</p> <p>11 A. What does the B stand for?</p> <p>12 Q. I understand the time clock area.</p> <p>13 Exhibit 55 generally speaking represents the area</p> <p>14 we were talking about?</p> <p>15 A. Yes, it does.</p> <p>16 Q. On the exhibit where it says "ramp,"</p> <p>17 does it look where the ramp would be?</p> <p>18 A. Yes.</p> <p>19 Q. And the B where the time clock would</p> <p>20 be?</p> <p>21 A. Yes.</p> <p>22 Q. There is no table on this?</p> <p>23 A. The table is -- the conveyor belt would</p> <p>24 be here in front -- the conveyor belt was always</p>

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1 the metal table right there, so Paul came up, I'm
 2 guessing, his intention was to pull up there
 3 right out and get back in there. I don't think
 4 he punched in that day. He drove in. -- there's
 5 a conveyor belt right there. You can't make a
 6 left because all the freights there, pallets and
 7 cans, there is no access in the morning. After
 8 everything is gone, you can drive around. All
 9 the trucks that is on this conveyor belt, they
 10 all use this entrance and exit. What I meant was
 11 this area drivers come to work, they go out to
 12 this parking lot, pissed off they come around
 13 like friggin screwballs, then they punch it in.
 14 Those guys that goes unnoticed, so yes, this is
 15 accurate description of the ramp, what isn't
 16 there is the belt, you can't go as far as here.

17 Q. You can't go straight?

18 A. No.

19 Q. Give us some idea how far the belt
 20 would be from the entrance?

21 A. Eight feet, eight to 12 feet. I'm bad
 22 at distance.

23 Q. It's right there?

24 A. Yes.

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1 Q. From one side of this room to the
 2 other?

3 A. Yes.

4 Q. Someone had to make a right-hand turn
 5 quickly?

6 A. Yes.

7 Q. That table is in front of the belt?

8 A. Yes, pretty much right in front of it.

9 When you come up to the ramp, it is in this
 10 area.

11 Q. Did you see Paul Pizzuto leave in his
 12 car?

13 A. No, I didn't.

14 Q. When drivers would drive up the ramp
 15 and do this time-clock punch-in thing --

16 A. They usually stop at the bottom here,
 17 run in and run out. Paul, for whatever reason,
 18 he drove up.

19 Q. When you say "at the bottom" the bottom
 20 of the ramp or where they --

21 A. No, the bottom of the ramp down here,
 22 the parking lot area.

23 Q. That was the usual procedure?

24 A. Yes.

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1 Q. Did you observe anything threatening or
 2 alarming about Paul Pizzuto on that occasion?

3 A. No.

4 Q. Did you hear him make any threats or
 5 remarks to the supervisors at that time?

6 A. No, I didn't.

7 Q. Were there other drivers congregated --
 8 you said some people were laughing and so forth,
 9 do you remember who those other people might have
 10 been?

11 A. I really don't.

12 Q. Do you know whether or not they were
 13 drivers?

14 A. Yes, definitely drivers. Like I said,
 15 once 6:45 starts, you stop and go to this area
 16 here where we usually have a meeting. The
 17 supervisor discusses whatever the topics, current
 18 events at the time. That's what pretty much
 19 everybody did, so I was at the time clock, I
 20 turned around, I saw a little commotion and I
 21 started my day, went to the meeting.

22 Q. Did you ever hear Paul Pizzuto make any
 23 threats to any supervisor?

24 A. No.

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1 Q. Do you remember that Paul Pizzuto had
 2 been on some sort of leave of absence prior to
 3 this time?

4 A. Vaguely remember that. I'm sure he
 5 was.

6 Q. Did you have any idea as to what kind
 7 of condition that led to that leave of absence?

8 A. No.

9 Q. Did Paul Pizzuto seem any different
 10 after he returned from that leave of absence?

11 A. Not really. He just seemed like Paul,
 12 back to work, he was still cracking jokes and
 13 being himself.

14 MR. MULHEARN: I have got no
 15 further questions.

16 CROSS-EXAMINATION

17 BY MR. PERLMAN:

18 Q. Good morning, Mr. Sambataro. My name
 19 is Max Perlman. I represent the defendants in
 20 this case, DHL, Mr. Hamilton, Mr. Crossken,
 21 Mr. Leveris and Mr. Sweatt. Those are my
 22 clients. Do you know whether Mr. Pizzuto is
 23 disabled?

24 A. No, I don't know.

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1 Q. Do you know whether Mr. Pizzuto was a
2 good driver. When I say good driver, good at
3 performing the driving for Airborne as opposed to
4 being a good and able --

5 **A. No accidents, if that's what you mean.**
6 **I would say, yes.**

7 Q. Was Paul Pizzuto good at his job?

8 **A. Yes, he was.**

9 Q. How could you tell he was good at his
10 job?

11 **A. Because he came to work every day.**

12 Q. Did you get to see his performance?
13 Did you get to see his error rate?

14 **A. No. That's daily -- I have no access**
15 **to that.**

16 Q. You never saw whether or not he was
17 performing his job to the standards that were
18 acceptable to --

19 **A. As I mentioned earlier about time**
20 **commitments, I have no idea.**

21 Q. You don't know. Okay. Do you know
22 whether Paul Pizzuto was deserving of the
23 discipline that the supervisors gave him while he
24 was employed at Airborne?

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1 **that he was treated unfairly.**

2 Q. I'm looking for your perspective, you
3 told me that you saw Mr. Pizzuto being singled
4 out for discipline; whatever you mean by that, I
5 want to know, do you know why Mr. Pizzuto was
6 singled out for discipline?

7 **A. Probably when I said earlier, got to**
8 **get the last word in, rubbed him the wrong way.**
9 **I was trying to help the guy. I'm telling you**
10 **how I know Paul and he can be a smart ass when**
11 **he's provoked. I'm the same way when I'm**
12 **provoked. I'm threatening.**

13 Q. When you say you're trying to help the
14 guy, I understand that it's admirable to help a
15 friend, are you saying here you're testifying
16 that you're trying to help the guy?

17 **A. He called me a year ago, if I recall a**
18 **certain instance, and I said I'd help him out.**

19 Q. You would like to testify in a way that
20 would help him, if you can?

21 **A. Right.**

22 Q. Did you in 2003 witness any erratic
23 behavior on the part of Mr. Pizzuto?

24 **A. No.**

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1 **A. At which point?**

2 Q. 2003. Right now, I'm not talking about
3 the termination. I'm talking about routine
4 discipline.

5 **A. Like I said earlier, I don't really pay**
6 **attention to what is going around me. There was**
7 **always arguments with Paul and other drivers in**
8 **my immediate area in the morning and I couldn't**
9 **give an example. I know the supervisors -- this**
10 **is just in general -- the supervisors, they**
11 **enforce things from my experience, one guy get**
12 **away with swearing, where somebody else won't get**
13 **away with swearing. Some guys get away with**
14 **smoking on the belts, it depends on the**
15 **supervisor.**

16 Q. Do you feel that Paul Pizzuto was
17 singled out for discipline?

18 **A. Yes.**

19 Q. Do you know why that was?

20 **A. When you say "discipline," I need to**
21 **know what the circumstances were. Was it being**
22 **late or missing a pickup or missed delivery a**
23 **package or having the wrong scanner. I'm not**
24 **sure exactly which discipline you're referring to**

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1 Q. Anything out of the ordinary?

2 **A. No.**

3 Q. Did you know whether he was struggling
4 with any emotional issues at that time?

5 **A. No, I didn't.**

6 Q. Or any mental issues?

7 **A. No.**

8 Q. You don't know whether or not he
9 threatened his supervisors; isn't that right?

10 **A. That's correct.**

11 Q. And you don't know what it was that
12 Mr. Leveris felt when Mr. Pizzuto drove his car
13 into the dock; isn't that right?

14 **A. I don't know what he felt?**

15 Q. Yes.

16 **A. No, I don't.**

17 Q. You don't know what Mr. Sweatt felt
18 when he drove into the dock?

19 **A. No. I don't know what Paul was**
20 **feeling, either.**

21 Q. When we spoke back in January you also
22 told me in the conversation, you said Paul
23 Pizzuto is, quote, unquote, a pain in the ass.
24 Do you remember telling me that?

Paul Pizutto Coaching / Disciplinary Action Log				
Date	Description	Discipline Type	Action	
2/25/1991	Preventable Accident	C	Written Warning 2/26/91	
4/24/1991	Failure to ensure proper supplies	C	Written Warning 4/25/91	
6/11/1991	Failure to follow instructions	B	Written Warning 6/11/91	
7/26/1991	Preventable Accident	C	Written Warning 7/29/91	
11/5/1993	Failed to Follow instructions-misrouted 36 shipments	C	Written Warning 11/5/93	
1/30/1994	Violating DOT 60 hour Rule	C	Written Warning 2/18/94	
2/25/1994	Failed to follow instructions	C	Written Warning 2/25/94	
3/17/1994	Failure to follow uniform guidelines	C	Written Warning 3/22/94	
10/31/1994	Improper Sort/Load function	C	Written Warning 10/31/94	
10/31/1994	Failure to follow uniform guidelines	C	Written Warning 10/31/94	
10/31/1994	Failure to Scan Shipments	C	Written Warning 10/31/94	
3/28/1995	Failure to Scan Shipments	C	Written Warning 3/30/95	
4/19/1995	Attendance violation	A	Written Warning 4/19/95	
7/21/1995	Attendance violation	A	Written Warning 7/25/95	
8/28/1995	Preventable Accident	C	Written Warning 8/31/95	
10/9/1995	Attendance violation	A	Final Written Warning 10/18/95	
11/20/1995	Attendance violation	A	Suspension 12/5/95-reduced to Final warning by union 2/16/96	
2/14/1996	Leaving Freight without signature	C	Coaching notation in file - No formal disciplinary action	
5/28/1997	Leaving Freight in vehicle	C	Warning Letter 5/29/97	
10/25/1997	Preventable Accident	C	Written Warning 10/29/1997	
1/14/1998	Failed to Protect Start Time	C	Written Warning 1/21/98	
4/28/1998	Insubordination-refused reasonable instruction 3 times	B	Note to File	
5/23/1998	Violating DOT 60 hour Rule	C	Written Warning 6/12/98	
3/2/1999	Preventable Accident	C	Written Warning 3/11/99	
1/17/2000	Delivery procedures failure	C	Warning Letter 1/19/00	
6/15/2001	Insubordination-unauthorized break and uncooperative	B	Letter to file 6/18/01	
6/19/2001	Insubordination-uncooperative, poor attitude and response	B	Letter to file 6/19/01	
6/19/2001	Failure to scan 15 shipments	C	Written Warning 6/22/01	
6/19/2001	Insubordination- hid van keys, deliberate delay	B	Note to File	
6/21/2001	Failure to Scan 36 Shipments	C	Written Warning 6/22/01	
7/3/2001	Failure to scan 12 shipments	C	Written Warning 7/6/01	
7/13/2001	Failure to scan 6 shipments (week ending 7/13/01)	C	SUSPENSION reduced to Warning 7/19/01	
8/16/2001	Refusal to surrender Gas Card - refusing a direct order	B	Discharge reduced to 5 day suspension 8/17-22/02 by union	
10/1/2001	Failure to scan 45 shipments	C	Written Warning 10/1/01	
12/31/2001	Failure to scan 8 shipments	C	Written Warning 1/8/02	

EXHIBIT

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351992

Date	Description	Discipline Type	Action		
3/8/2002	Failure to scan 7 shipments	C	Written Warning 3/13/02		
4/1/2002	Violated Attendance Standards-late 8 times in 4 months	A	Written warning 4/2/02		
4/3/2002	Failure to Surrender Gas Card	C	Written Warning 4/4/02		
4/4-5/02	Misconduct	D	Written Warning 4/5/02 - further instances could lead to termination		
5/23-24/02	Theft of company time	D	Discharge reduced to 2 day suspension 6/03/02 by union		
8/8/2002	Insubordination-refused to follow direct order	D	Written Warning 8/9/02 - further instances could lead to termination		
9/25/2002	Insubordination - refused to follow direct order	D	Suspension 9/26/02 - reduced to Warning by union		
9/29/2002	Tardiness	A	Written warning 10/17/02		
2/24/2003	Preventable Accident	C	Written Warning 3/4/03		
6/6/2003	5 days of absence	A	Coaching notation in file 6/18/03 - No formal disciplinary action		
7/24/2003	Threatening remarks/intimidating gestures	D	Written warning 7/24/03-further instances could lead to termination		
7/24/2003	Failure to scan shipment	C	Written Warning 7/24/03		
7/25/2003	Threatening and dangerous behavior	D	Discharge 7/25/03		
Key to Discipline Type					
A -- Attendance Policy					
B -- Insubordination and Gross Negligence					
C -- Careless and Neglectful Performance of Duties					
D -- Cardinal Offenses subject to Discharge					

EXHIBIT 1
-HARASSMENT COMPLAINT FORM-
 (Privileged and Confidential)

Name: PAUL PIZZUTO Job Title: Driver
 Station: NSH Supervisor: STEVE CROSSKENS
 Date(s) of Incident(s): 5/23 5/24 6/3 6/4 7/3 Case No: _____

Details of Incident(s):

5/23 I reported to work on light duty. I was instructed to clean ^{the} station at the truck lineup for the pm drivers. As I was working I felt dizzy, nausea a result of the medication I am currently taking and I sat down to rest on awalking at Approx 2:05 pm I punched out for the day. On 5/24/02 I was questioned on my whereabouts and explained what I wrote above. Steve Crosskens said he was to conduct an investigative meeting and meet with me without. On 5/24 that afternoon Approx 1:45 pm Steve Crosskens terminated me for dishonesty and stealing Company time. On 6/3 a local hearing was held by Steve Crosskens, Robert Mergenhegen (of Airborne), Joe Quigley, Joe Vallone and business agent Lou Di Giampaolo and the agreement they reached was a 2 day suspension with all wages paid back except (over

Signatures (upon receipt of complaint form):

Complainant: Paul Pizzuto
 Union Rep: Joe Vallone Date Received: 7/10/02
 Company Rep: Steve Crosskens Date Received: 07/10/02
 Action: Resolved _____ Dismissed _____ Withdrawn _____ or Fwd to Step 2 _____

Note: Resolutions are final and binding.

ad Forward to Seattle ⁶⁰⁰ to be put into Steve Crosskens's File

Signatures (at completion of mediation):

Complainant: Paul Pizzuto 3/11/03 Date: _____
 Respondent: _____ Date: _____
 Union Rep: _____ Date: _____
 Company Rep: _____ Date: _____

Copy To: Complainant, Respondent, DFSM, Business Agent, Labor Relations, Regional Manager, Independent Oversight Panel

Exhibit 7

the 2 day suspension. I reported to work on 6/4/02 and Steve Crossens stated I was still terminated.

On 6/5/02 I reported back to work after being notified by my Union Steward Dave Vallone. On 6/6 and 6/7 I worked E.R.T.W (Light Duty). On 6/7 I reported to work after being cleared by the doctor, since the accident I have not been paid ^{full} for for agreement reached along with workmans comp benefits due to Steve Crossens failure to notify workmans comp of hours paid an agreement reached.

On 7/3 I was told to remove t-shirt with Airborne Express logo because it was not an issued shirt by the company. Your Immediate Attention to this matter would greatly be appreciated

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Exhibits: 42-59

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PAUL PIZZUTO

Plaintiff

vs.

Docket No. 04-12492 GAO

CROSSKEN EXPRESS, INC., STEVEN
CROSSKEN, JOSEPH HAMILTON, GREG
SWEATT, AND ARTHUR LEVERIS

Defendants

DEPOSITION OF PAUL PIZZUTO

Tuesday, June 12, 2007, 10:23 a.m.

Sullivan, Weinstein & McQuay, P.C.

2 Park Plaza, Suite 610

Boston, Massachusetts

-----Reporter: Joan M. Cassidy, RPR, CRR-----

jcassidy@fabreporters.com www.fabreporters.com

Farmer Arsenault Brock LLC

50 Congress Street, Suite 415

Boston, Massachusetts 02109

617.728.4404 Fax 617.728.4403

Exhibit 8

Paul Pizzuto
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10 (Pages 34 to 37)

<p style="text-align: right;">34</p> <p>1 Q. Okay. I want to talk to you about those, 2 but first I want to also ask, are you currently 3 taking any drugs, illicit drugs, say marijuana, 4 cocaine, any of those things? 5 A. No. 6 Q. Percocet? 7 A. No. 8 Q. OxyContin? 9 A. No. 10 Q. Are you under the influence of any drugs or 11 alcohol right now? 12 A. No, except for the prescription drugs. 13 Q. Aside from the four prescription drugs that 14 you have just identified to me; is that right? 15 A. Right, right. 16 Q. Is there anything about the four 17 prescription drugs that you just mentioned that 18 would affect your ability to testify here today? 19 A. Not affect me individually, but I am 20 diagnosed bipolar, I don't know if you know what 21 bipolar is. 22 Q. I'm vaguely familiar with it. Why don't 23 you give me your understanding of that. 24 A. Well, I'll tell you briefly. I lost my</p>	<p style="text-align: right;">36</p> <p>1 that it's a manic state. And when I just can't get 2 out of bed in the morning, that's depression. 3 Q. That's the depressed state. Okay. I'm 4 just trying to figure out if there is anything 5 that's going to affect your ability to do your job 6 today, which is to tell the truth. 7 A. No. 8 Q. There's nothing about your psychological 9 state or the medications you are on that would 10 affect your ability to tell the truth, right? 11 A. Other than my disease. I mean, you'd have 12 to talk to my psychiatrist about my state of mind. 13 I mean, right now I feel like I'm giving my 14 testimony to the best of my knowledge. 15 Q. Right. 16 A. You know, I mean, I'm not a doctor, you're 17 not a doctor. He's the doctor. He can tell you all 18 about the disease. 19 Q. And you know a decent amount about the 20 disease too from all the treatment you have 21 received, right? 22 A. I sure do, from all my past with my family. 23 Q. In your experience does bipolar disorder or 24 any of the medications that you are presently on</p>
<p style="text-align: right;">35</p> <p>1 mother in 1987. She committed suicide from her 2 disease. I lost my brother at age 43. He died from 3 the disease. And my younger brother hasn't gotten 4 treatment, and I waited forever to get treatment. 5 And it's basically -- everybody is different. You 6 either have a manic stage, which is a very high 7 stage, or you go through a real depressing state, 8 which you have no energy, fatigue, loss of 9 concentration, inability to cope, all of the above. 10 MR. PERLMAN: Can we go off the record 11 just for a second? 12 (Discussion off the record.) 13 Q. I want to talk about -- you said in bipolar 14 there is a manic and a depressive stage -- 15 A. Yes. 16 Q. -- or state? 17 A. Yes, everyone has different states. 18 Q. Are you in one or the other right now? 19 A. I am probably a little bit manic, but I'm 20 not manic-manic. I'm definitely above the 21 depressive state right now, but I'm leaning towards 22 the manic stage. I mean, I don't know what type of 23 scale it is. I just know my body. I know when I'm 24 a little hyper and I'm a little bit strong-headed</p>	<p style="text-align: right;">37</p> <p>1 affect one's ability to tell the truth? 2 A. No, I've always been an honest person all 3 my life. 4 Q. Okay. I'm going to count on that today; so 5 I'm going to ask you some questions, and I'm going 6 to need you to be honest. 7 A. That's what I will do. 8 Q. Good. What are you taking lithium for? 9 A. Lithium is one of the drugs I am taking for 10 the bipolar as well as the other two. They are -- 11 they basically offset different chemical reactions 12 that I'm going through in my body and in my brain; 13 and right now, currently, the psychiatrist has found 14 those three to be working for me right now. 15 Q. Those three would be the lithium, the 16 Effexor, and the Lamictal? 17 A. Lamictal. 18 Q. So all three of those drugs are for your 19 bipolar disorder? 20 A. Yes. 21 Q. And do you presently have a psychiatrist? 22 A. Yes, I see him once a month. 23 Q. What's the name of that psychiatrist? 24 A. Psychiatrist? Dr. Sadowsky.</p>

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11 (Pages 38 to 41)

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1 Q. S-a-d --
2 A. Yes, o-w-s-k-y.
3 Q. Okay. And Dr. Sadowsky has prescribed all
4 three of these drugs for bipolar to you?
5 A. Yes, he has.
6 Q. Are all three drugs just for bipolar and
7 nothing else?
8 A. No, nothing else, that's it, yeah.
9 Q. How long have you taken lithium?
10 A. Well, let's see. I want to say, whew,
11 sometime in 2005. I want to say, like, October,
12 November of '05.
13 Q. That's the first time you were prescribed
14 the lithium?
15 A. You know what? We started out with
16 different drugs. Those are the ones I'm currently
17 on. I did go through a few other different drugs
18 because it's a process, in order to find the right
19 drug that's working for each individual, until you
20 find it. Now, that's basically keeping me together,
21 those three.
22 Q. All right.
23 A. But I had to experiment with everything
24 else until I got up to that level.

39

1 Q. So your psychiatrist had you on and off
2 certain drugs for a --
3 A. Oh, yeah, I tried probably about four
4 different drugs.
5 Q. Let's rip through this on the dates. I
6 just want to know, when did you start taking
7 Effexor?
8 A. I will give you a ballpark. I don't know
9 exactly.
10 Q. That's fine.
11 A. But it was pretty much the same time as
12 those other three, the Lamictal.
13 Q. Fall 2005?
14 A. Yes, and the lithium.
15 Q. Same answer for Lamictal, yes?
16 A. Pretty much.
17 Q. Fall 2005?
18 A. Yeah.
19 Q. Now, I think you testified that your mother
20 was bipolar; your brother, who is now deceased, was
21 bipolar?
22 A. Right.
23 Q. Your other brother, I'm sorry, is bipolar
24 or is he not?

40

1 A. He's not diagnosed.
2 Q. He's not diagnosed?
3 A. No. I mean, he has depression, but
4 everybody has depression. I fought off taking meds
5 all my life because I saw what my mother went
6 through, in institutions and everything else. So
7 you can see how I felt about the whole situation.
8 Then I saw my brother go on SSI because he couldn't
9 cope anymore, and he was in a state of confusion all
10 the time.
11 Q. Is this the brother who is now not with us?
12 A. He's deceased, yeah. And I worked for 14
13 years for Airborne with this disease, and I fought
14 it off for 14 years because I didn't want to take
15 these drugs. And then when I needed help, I wasn't
16 given the opportunity to get help.
17 Q. So it sounds to me that -- when were you
18 diagnosed with bipolar disorder?
19 A. That was sometime after -- I want to say it
20 was early 2006.
21 Q. Who diagnosed you?
22 A. Or late 2005. Dr. Sadowsky.
23 Q. I take it that when you were diagnosed
24 doesn't mean that's when you got it, right, or

41

1 that's when it first presented itself?
2 A. Well --
3 Q. You have had bipolar for a long time,
4 right?
5 A. Yeah. I have been diagnosed since he
6 diagnosed me, but I was taking different drugs
7 through my primary care physician, like Paxil, which
8 is another antidepressant, Wellbutrin, which is
9 another antidepressant. I was on all kinds of
10 different drugs for sleep apnea, which I was
11 diagnosed with.
12 Q. I'm just asking about the bipolar. I want
13 to know -- I mean, how long have you had bipolar
14 disorder?
15 A. I've had it diagnosed for that long.
16 Q. Right, but --
17 A. I couldn't tell you. I'm not a doctor.
18 Q. Right, but you told me you worked for 14
19 years with -- for Airborne with that condition, so
20 you've had it since at least the early '90s. Did
21 you have it before then too?
22 A. I don't know, but I had a lot of symptoms
23 leading up to what -- I was believing that it was
24 bipolar, because, again, I told you I lost two

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12 (Pages 42 to 45)

<p style="text-align: right;">42</p> <p>1 family members, and I know this disease is a</p> <p>2 chemical passed on through the genes, so I had a</p> <p>3 very good idea of what I was fighting, because my</p> <p>4 previous two people that had passed on were</p> <p>5 diagnosed with this, so...</p> <p>6 Q. When did that --</p> <p>7 A. So I had no doubt at that point.</p> <p>8 Q. When did that occur to you, that you had no</p> <p>9 doubt that it was bipolar disorder?</p> <p>10 A. I want to say maybe 2002.</p> <p>11 Q. 2002?</p> <p>12 A. Right around there.</p> <p>13 Q. I would imagine that bipolar disorder is</p> <p>14 not an easy condition to live with.</p> <p>15 A. No.</p> <p>16 Q. How does it affect your day-to-day</p> <p>17 activities or your life?</p> <p>18 A. Well, when you are in a manic state, you</p> <p>19 speed all the time upstairs in your brain; or you</p> <p>20 are in bed and you can't get out of bed. But I got</p> <p>21 up to go to work every day, I can tell you that.</p> <p>22 Q. Uh-huh. So you're either in a manic or</p> <p>23 depressive state?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">44</p> <p>1 and -- try to go out and, you know, look for</p> <p>2 trouble; but, I mean, if there was something</p> <p>3 chemically I reacted to, then, I mean, I'd give my</p> <p>4 opinion about it. You know?</p> <p>5 Q. That you might not have done if you were in</p> <p>6 a depressive state?</p> <p>7 A. Yeah. Depressive state, I'd go hide, I'd</p> <p>8 take off and go hide somewhere.</p> <p>9 Q. Let me ask you this, the two incidents, the</p> <p>10 Andover incident and the Lawrence incident, where</p> <p>11 you were charged with various crimes --</p> <p>12 A. Yeah.</p> <p>13 Q. -- can you characterize whether you were,</p> <p>14 in your opinion, in a manic state or depressive</p> <p>15 state at that time?</p> <p>16 A. Oh, definitely manic, without a doubt.</p> <p>17 Q. In those two --</p> <p>18 A. Yeah, even the OUI is, you know, without a</p> <p>19 doubt.</p> <p>20 Q. Being honest, when you are in a manic</p> <p>21 stage, are you more or less prone to anger?</p> <p>22 A. It depends how you define anger.</p> <p>23 Q. Do you know what the word "anger" means?</p> <p>24 A. Yeah, but anger brought on by individuals</p>
<p style="text-align: right;">43</p> <p>1 Q. Characterize for me what it's like for you</p> <p>2 to be in a depressive state.</p> <p>3 A. Not wanting to go out of the house, not</p> <p>4 wanting to socialize, not wanting to see people, not</p> <p>5 wanting to be around my family.</p> <p>6 Q. Not wanting to interact with people at all?</p> <p>7 A. None whatsoever, no.</p> <p>8 Q. And describe for me what it's like for you</p> <p>9 to be in a manic state of mind.</p> <p>10 A. To do things that I didn't think I could</p> <p>11 achieve in the daytime, just to keep my mind busy,</p> <p>12 constantly trying to do things, just to take time,</p> <p>13 make the time go by constantly.</p> <p>14 Q. Do you feel agitated?</p> <p>15 A. A lot of times.</p> <p>16 Q. Angry?</p> <p>17 A. I wouldn't say angry. I would say</p> <p>18 agitated, confused, inability to focus.</p> <p>19 Q. Aggressive?</p> <p>20 A. I wouldn't say aggressive, unless there was</p> <p>21 something that irritated me that was brought on to</p> <p>22 me.</p> <p>23 Q. Were you --</p> <p>24 A. I didn't initially -- I didn't go out</p>	<p style="text-align: right;">45</p> <p>1 or anger brought on through myself?</p> <p>2 Q. Either one. Let's go with each. Anger</p> <p>3 brought on by yourself?</p> <p>4 A. I'll say a little bit of each.</p> <p>5 Q. So you are more prone to anger if you are</p> <p>6 in a manic state?</p> <p>7 A. I'm more prone to being irritable. I</p> <p>8 wouldn't say angry. I'd be very irritable, not</p> <p>9 angry.</p> <p>10 Q. Well, how would the irritableness -- how</p> <p>11 would you show irritableness if you were in a manic</p> <p>12 state?</p> <p>13 A. Well, the irritableness would not let me do</p> <p>14 my job properly. All right? As far as, like I</p> <p>15 explained to you, inability to cope, focusing on my</p> <p>16 daily routines, very daily routines, small chores,</p> <p>17 little things. That's the disease.</p> <p>18 Q. Is there a cure for it?</p> <p>19 A. No cure. I'm going to live with this for</p> <p>20 the rest of my life.</p> <p>21 Q. How do you expect it will impact you for</p> <p>22 the rest of your life?</p> <p>23 A. I couldn't answer that, but I can tell you</p> <p>24 now that I am feeling somewhat better, but there's</p>

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13 (Pages 46 to 49)

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1 no cure, because I could feel good today, and
2 tomorrow it could be all done, all done.

3 Q. Does it affect your ability to, say, hold
4 a job?

5 A. I held a job for 18 years, 19 years, before
6 I didn't work.

7 Q. All right, but -- I understand your answer,
8 but I want you to answer my question. It calls for
9 a yes or no answer. Did bipolar disorder affect
10 your ability to hold down a job?

11 A. No.

12 Q. Now, you said that the irritableness that
13 you experience affects you in a way that you are not
14 able to do your job properly. Could you please
15 expand on that, explain what you mean by that.

16 A. Well, you've got to understand, in the
17 business I was in, seconds meant everything to
18 management; not minutes, not hours, seconds. And if
19 someone was pursuing you and checking on you every
20 day and on your back -- "you didn't do this right,"
21 "you didn't do that right" -- it sort of makes you
22 irritable as an individual. You want to be treated
23 like a human being. You don't want to be treated
24 like, you know, a lower individual than the person

47

1 talking to you. I want to be respected. That's
2 all. That's all I've ever wanted.

3 Q. And what happened when you weren't
4 respected?

5 A. When I wasn't respected, I was abused by
6 management.

7 Q. How did you react?

8 A. I reacted the best I could. Obviously, I
9 never reacted assaulting anyone.

10 Q. You never hit anyone, right?

11 A. Never.

12 Q. You said you were abused by management.
13 Can you explain what you mean by that, please.

14 A. They check-ride me on several occasions.
15 Check-riding is something where the supervisors make
16 sure you're doing your job. Several warning letters
17 in one day, I can recall once when I got five
18 warning letters before I even got to my first stop.

19 Q. Anything else?

20 A. Punching into work one second late, going
21 over 60 hours, ten minutes late and getting warning
22 letters, wearing a different T-shirt so I can load
23 my vehicle in 90-degree heat in the building, and I
24 got another warning letter.

48

1 Q. So if I am correct, when you say you were
2 abused by management, you mean conduct that's
3 associated with either check-rides that you think
4 were unwarranted or disciplinary warnings that you
5 feel were unwarranted?

6 A. Right. I can only sum it up to one word --

7 Q. Anything else?

8 A. I had two occasions which I never got the
9 opportunity that I deserved through a harassment
10 grievance that I put through the union, and never
11 once was it discussed the way it should have been.

12 Q. You said there's one word. What's the
13 word?

14 A. Harassment, constant harassment.

15 Q. Why do you think you were harassed?

16 A. 'Cause I stand up for what I believe in. I
17 do my job day in, day out. I help my peers whenever
18 possible, and I wasn't treated fair by management
19 because for some reason they couldn't accept the
20 fact that I was having emotional problems, and they
21 thought I was out to get them.

22 Q. How do you know that?

23 A. I don't have it written down, but it's
24 obviously in a lot of the paperwork that Richard has

49

1 as far as warning letters. I have 53 warning
2 letters over 14 years.

3 Q. How many of them were warranted?

4 A. Maybe ten, maybe, and I battled this
5 disease for 14 years. I didn't miss sick days and
6 go over my sick days. If I had five --

7 Q. How does that relate to your warning
8 letters?

9 A. Because I'm -- you know, my chemical
10 imbalance. I mean, I'm bipolar. You know?

11 Q. So that your chemical imbalance was
12 resulting in these warning letters?

13 A. Well, it had an effect on it. I wouldn't
14 say it was directly resulting in them, but --

15 Q. What was the effect that it had?

16 A. The warning letters?

17 Q. Uh-huh.

18 A. It led to suspensions, they led to
19 terminations.

20 Q. I understand. What I am asking you is, how
21 did the bipolar disorder result in or affect the
22 warning letters?

23 A. Well, again --

24 Q. You say some of them were legitimate?

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16 (Pages 58 to 61)

<p style="text-align: right;">58</p> <p>1 A. When I started? I would say between a.m. 2 and p.m. shifts, there had to be maybe 75 in that 3 building. 4 Q. How many were drivers? 5 A. There was about 75 drivers. 6 Q. 75 drivers? 7 A. Yeah. No one ever did a sort. We did our 8 own sort and load, basically. 9 Q. How about supervisors? 10 A. There was always usually one supervisor to 11 a belt over there. That was over there -- well, 12 there were two belts, but there was two sides on one 13 and one on the other, on the back wall, so three 14 supervisors; and the manager would come in after 15 that. 16 Q. So when you began, approximately -- when 17 you began in 1990, the approximate figures were 18 there was in that station, NSH station, one manager, 19 three supervisors, and 75 drivers? 20 A. Yeah. It's not exact, but that's a 21 ballpark figure. 22 Q. Ballpark. How about when you were 23 terminated in July 2003; can you give me the same 24 numbers?</p>	<p style="text-align: right;">60</p> <p>1 A. I can't tell you specifically on that. 2 Q. I am not asking for specifics. I'm just 3 asking generally. You worked there for a good 4 number of years, so you'd have some idea of how many 5 people you came into contact with. 6 A. There was a day shift and a night shift. 7 The day shift was the majority of the employees. 8 The night shift was much thinned out. It was 9 thinned out a lot because the pickups were a lot 10 less, obviously. 11 Q. Right. So you think 200 drivers is a safe 12 estimate for the number of drivers you came into 13 contact with when you were working for Airborne? 14 A. Yeah, I would say so. 15 Q. Okay. How about, how many plant managers 16 did NSH have during the time you worked there? 17 A. You might have to give me a lot of time on 18 this one. I have to count them all. 19 Q. Let's work backwards. Joe Hamilton was the 20 manager when you were terminated, right? 21 A. Yeah. 22 Q. And before that? 23 A. Crossken. 24 Q. Before that?</p>
<p style="text-align: right;">59</p> <p>1 A. In that building? 2 Q. Yes, sir. 3 A. Boy, there had to be maybe 125 drivers, and 4 there was probably about, I want to say six or seven 5 supervisors. 6 Q. And then a manager? 7 A. And then a manager. 8 Q. I take it in the course of your employment 9 with the company, you came in contact with quite a 10 few drivers? 11 A. Drivers, yes. 12 Q. Yes. Can you approximate how many drivers 13 that you worked with over the years? 14 A. That I worked with as a whole? 15 Q. That you worked with at the NSH station, 16 that you have come into contact with. 17 A. How would you define "contact"? 18 Q. Being at the NSH facility at the same time. 19 A. Like going in and loading my truck? 20 Q. Yes, sure. 21 A. Yeah, so it would be the equivalent of 22 adding up the 75 and 120. What's that, 200? 23 Q. So would you say you came into contact with 24 no fewer than 200 drivers over the course of --</p>	<p style="text-align: right;">61</p> <p>1 A. Tom Hearn, Mark Page, Scott Rutledge. How 2 many is that? 3 Q. That's five. 4 A. Those are most of the managers there in the 5 14 years. 6 Q. Do you remember who the manager was when 7 you started? 8 A. Scott Rutledge -- actually, Bob Cox. 9 Q. So you worked under approximately six plant 10 managers while you were with the company? 11 A. Yeah, if not more. 12 Q. And you were disciplined on numerous 13 occasions when you were working for the company; is 14 that right? 15 A. Yes. 16 Q. I'm going to show you what's been marked as 17 Exhibit 2. Have you ever seen that document before, 18 sir? 19 A. (Witness reviews document.) I have. 20 Q. And what is that document? 21 A. These are all my warning letters that I 22 received, I believe from, it looks like '91 to 2003. 23 Q. It's a summary of those warnings; isn't 24 that right?</p>

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20 (Pages 74 to 77)

<p style="text-align: right;">74</p> <p>1 Q. If you look at the bottom of Exhibit 43, it 2 says, "July 21, 2001." 3 A. 43 or 44? 4 Q. 43. 5 A. Okay. 6 Q. Do you see that? 7 A. All right. Then I guess those are them, 8 okay. 9 Q. These are the policies? 10 A. I have no objection to that. 11 Q. Okay. I'll take those back. Thank you. 12 You received a copy of the employee 13 handbook at some point during the course of your 14 employment, right? 15 A. I can't recall. 16 Q. It was available to you at the very least? 17 A. I'm sure it was available. I don't know if 18 I ever received it. 19 Q. What were your responsibilities as a 20 driver? 21 A. Responsible for loading and unloading my 22 vehicle -- first of all, loading; unloading at the 23 top of the belt in the morning, onto the belt, as 24 far as starting the day off. All the employees were</p>	<p style="text-align: right;">76</p> <p>1 route? 2 A. Right. And if it was mine, I'd throw it on 3 the back of the truck; and when I had time, I'd jump 4 up and sort it all. 5 Q. My apologies. I don't know much about the 6 mechanics of this -- 7 A. No, that's cool, that's all right. 8 Q. -- and I'm just going to ask you a few 9 things. So that's how you loaded your truck. You 10 would stand at the belt. You would have the truck 11 parked right behind you? 12 A. Yeah. 13 Q. Packages would come, you would see what 14 packages were going where. The ones that were 15 destined for your delivery route, you would put in 16 your truck? 17 A. Right, exactly. 18 Q. So that's loading. What did you mean by 19 unloading your truck? 20 A. Well, once you got back to the station, any 21 of the pickups you had done in between your 22 deliveries, you would have to come back to the 23 building and unload them back onto the belt in order 24 for the night people to reverse the belt and put</p>
<p style="text-align: right;">75</p> <p>1 on each side of the belt, and they had to pick off 2 all their freight for a specific route. And 3 everyone had to pick their own freight for their own 4 routes. 5 Q. How did you do that? 6 A. The belt was from one end of the building 7 to the other end, and they had cans that were 8 unloaded at the top of the belt. And all the 9 employees were lined up all the way down the belt; 10 and basically, an unloader would load the packages 11 onto the belt, and then there would be a couple 12 other individuals scanning packages for the station 13 to make sure everything made it to the end of the 14 belt for security reasons. Once it got past them, 15 all the employees were responsible for taking the 16 packages off the belt as they went down. 17 Q. How did you know what packages were 18 supposed to go into your truck as opposed to other 19 people's? 20 A. Because of all the streets in my area. 21 Q. Oh, so as the belt went by, you would read 22 the package -- 23 A. Yeah. 24 Q. -- to see whether or not it was on your</p>	<p style="text-align: right;">77</p> <p>1 them back in the cans so they can go in the truck 2 and back to the airport. 3 Q. So you would have certain destination 4 points on your route where you would have to pick up 5 packages? 6 A. Yeah. We had -- 7 Q. And your clients might give you packages to 8 send out? 9 A. Right. We had our scanners and radios at 10 the time for pickups and all that; and as we got 11 them -- we'd pick them up, you know, the most 12 convenient way possible. 13 Q. So did you have any other responsibilities 14 as a driver? I mean other than loading and 15 unloading and selecting freight for your truck. 16 A. No, basically, loading, if an individual 17 was working up on the top of the belt unloading next 18 to you, it was your responsibility to at least pull 19 his freight while he was unloading. So you would 20 take his freight, put it on the side next to the 21 floor. Or if the other guy on the other side of you 22 was in the unload too, which happened quite a bit, 23 you would have to pull three trucks. And obviously 24 if you are pulling three trucks, you are not going</p>

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21 (Pages 78 to 81)

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1 to get very much in your vehicle. So once those
2 guys got back to the trucks, you needed to load your
3 truck up and get out of the station as fast as
4 possible.

5 Q. Uh-huh, I see. So it sounds to me like a
6 certain amount of teamwork is required?

7 A. Absolutely, absolutely. It's all helping
8 your peers, which I practiced quite a bit.

9 Q. And who did you consider the members of
10 your team? The drivers were all kind of a team; is
11 that right?

12 A. Yeah, but I mean, you never worked next to
13 anyone for any length of time because you always had
14 to bid changes. You never knew who was going to be
15 aside of you for any length of time. So you
16 basically treated everyone the same. You know? You
17 just tried to help each other so it went as smoothly
18 as possible.

19 Q. Now, I take it among your other
20 responsibilities as driver was actually delivering
21 packages?

22 A. That was the idea in the morning, yeah.

23 Q. And driving the truck?

24 A. Driving the truck.

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1 Q. And interfacing with -- or I shouldn't say
2 interfacing -- interacting with people in the
3 public?

4 A. Oh, yeah, I had no problem interacting with
5 all my customers. I loved them all. I loved my
6 job. It was the internal pressures I was faced with
7 every morning, trying to deal with management that
8 came down on me for whatever reasons they wanted to.
9 You know? I, to this day, still don't know why I
10 was treated that unfairly, but -- I really can't
11 answer for them. That's something they are going to
12 have to answer to.

13 Q. I am going to describe certain abilities,
14 and I'm going to ask you whether they are necessary
15 for performing the essential functions of the job of
16 driver. You have identified basically what you did
17 as a driver. I'm going to identify certain
18 abilities, and I want you to tell me whether it's
19 necessary or not. Okay?

20 A. Okay.

21 Q. Do you understand the task?

22 A. Pretty much, yeah.

23 Q. Is there anything that's unclear about what
24 I'm asking you to do?

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1 A. No, not until you do it.

2 Q. No, I just want to -- I'm going to give
3 you -- I'm going to state an ability, and I want you
4 to tell me whether or not it's necessary for you to
5 perform the functions of the job of driver.

6 A. Okay, all right, yeah, no problem at all.

7 Q. The ability to drive safely?

8 A. Yes.

9 Q. The ability to stay alert?

10 A. Yes.

11 Q. The ability to get along well with others?

12 A. Yeah.

13 Q. You might want to answer yes just so we
14 have a clean transcript.

15 A. Yes.

16 Q. Understand instructions?

17 A. Yes.

18 Q. Carry out instructions?

19 A. Yes.

20 Q. Remember instructions?

21 A. Yes.

22 Q. Relate to other people?

23 A. Yes.

24 Q. Communicate and interact with other people?

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1 A. Yes.

2 Q. Work as part of a team?

3 A. Yes.

4 Q. Collaborate with other employees?

5 A. Yes.

6 Q. Respond appropriately to supervision?

7 A. Yes.

8 Q. Have regular contact with other people?

9 A. Yes.

10 Q. Perform repetitive tasks?

11 A. Yes.

12 Q. Perform varied tasks?

13 A. Yes.

14 Q. That's a yes?

15 A. Cross-training, yes. Cross-training is
16 what we do. Say like I just mentioned, if we had to
17 pull freight for another guy, I had to know his
18 route as well as the guy next to me on both sides.
19 That's basically cross-training.

20 Q. I see. Plan and perform tasks in an
21 organized manner?

22 A. Yes.

23 Q. Remain focused on tasks?

24 A. Yes.

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22 (Pages 82 to 85)

<p style="text-align: right;">82</p> <p>1 Q. Manage your time effectively?</p> <p>2 A. Yes.</p> <p>3 Q. Make independent judgments?</p> <p>4 A. Yes.</p> <p>5 Q. Supervise or manage others?</p> <p>6 A. No.</p> <p>7 Q. Perform under stress?</p> <p>8 A. Yes.</p> <p>9 Q. Be adaptive and flexible?</p> <p>10 A. Yes.</p> <p>11 Q. Take initiative?</p> <p>12 A. No.</p> <p>13 Q. Refrain from making threats?</p> <p>14 A. Yes.</p> <p>15 Q. Refrain from threatening behavior?</p> <p>16 A. Yes.</p> <p>17 Q. Are there any other functions or abilities</p> <p>18 than the ones I have just mentioned that you would</p> <p>19 need to be able to perform the essential functions</p> <p>20 of the job of driver?</p> <p>21 A. No. I mean, that's pretty much it in a</p> <p>22 nutshell.</p> <p>23 Q. That kind of covers it?</p> <p>24 A. Yeah.</p>	<p style="text-align: right;">84</p> <p>1 when he left NSH, did he do anything -- and I'm</p> <p>2 going to ask you for specifics -- did he do anything</p> <p>3 to discriminate against you?</p> <p>4 A. Yes.</p> <p>5 Q. What did he do?</p> <p>6 A. My first day back I went to my regular</p> <p>7 workplace area, and I did my precheck on my vehicle.</p> <p>8 The key to my bulkhead door was stuck in the</p> <p>9 bulkhead door, and it wouldn't open. I had no gas</p> <p>10 in my vehicle. My vehicle was running so poorly it</p> <p>11 broke down no more than two miles before I departed</p> <p>12 the station -- after I departed the station. I had</p> <p>13 to turn around after driving with my flashers on as</p> <p>14 safely as possible, because the vehicle was no good.</p> <p>15 It was kicking and bucking, and I couldn't even make</p> <p>16 it onto the highway. But I was already on the</p> <p>17 highway, so I reversed my direction.</p> <p>18 I came back into the station. Steve</p> <p>19 Crossken instructed me to off-load all my freight,</p> <p>20 take another vehicle, and I basically could not make</p> <p>21 service that day because of those incidents, which</p> <p>22 affected me in a way that he had to send out another</p> <p>23 driver to take freight off of my vehicle. Luckily,</p> <p>24 I made it through the day.</p>
<p style="text-align: right;">83</p> <p>1 Q. Okay. You mentioned earlier that you went</p> <p>2 on a leave beginning in the fall of 2002, returning</p> <p>3 February 2003?</p> <p>4 A. Yes.</p> <p>5 Q. Do you remember the exact date you</p> <p>6 returned?</p> <p>7 A. February 21, 2003.</p> <p>8 Q. February 21?</p> <p>9 A. 24, I'm sorry.</p> <p>10 Q. 24. Okay, that's what I thought. And when</p> <p>11 you returned, Steve Crossken was the plant manager</p> <p>12 at NSH; isn't that right?</p> <p>13 A. Yes.</p> <p>14 Q. But only for a short time, right?</p> <p>15 A. He left approximately two weeks after I</p> <p>16 was -- returned to work.</p> <p>17 Q. And in that two weeks Mr. Crossken didn't</p> <p>18 do anything to discriminate against you, did he?</p> <p>19 A. It's well documented with the Teamsters.</p> <p>20 It's well documented in my DOT.</p> <p>21 Q. I am just asking about -- whatever the</p> <p>22 grand history of this thing is, I'm just asking, for</p> <p>23 the two-week period, approximate two-week period</p> <p>24 from when you returned to work in February '03 to</p>	<p style="text-align: right;">85</p> <p>1 When I returned to the vehicle -- when I</p> <p>2 returned to the station, I tried to pull my vehicle</p> <p>3 in the station. There was stuff all over the --</p> <p>4 there were skids all over the entrance door. I was</p> <p>5 involved in a minor accident in the building.</p> <p>6 Mr. Crossken should have realized that I</p> <p>7 was already out on short-term disability for severe</p> <p>8 stress and depression and anxiety. I was issued a</p> <p>9 warning letter. I believe I was issued another</p> <p>10 warning letter for preventable accidents on 2/24.</p> <p>11 That was it.</p> <p>12 Then basically I thought I was all</p> <p>13 right, I guess, considering the day I had, and I</p> <p>14 came in the next day and worked; and I had to bite</p> <p>15 my tongue for the rest of the time until he</p> <p>16 departed. But I truly believe that either him or he</p> <p>17 instructed one of his management team to do those</p> <p>18 actual things that I just -- that he had just</p> <p>19 written down. Can I prove it? No. Do I think he</p> <p>20 was harassing me? Yeah. In my words, definitely.</p> <p>21 Q. And why do you think he was harassing you?</p> <p>22 A. Steve Crossken tried to fire me on two</p> <p>23 different occasions. I was injured in 2002, April</p> <p>24 2002. I was on short-term -- I was on disability</p>

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25 (Pages 94 to 97)

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1 through these one by one like you told me. No gas
2 in the vehicle. What proof do you have that he had
3 something to do with that?

4 A. Well, his supervisors answer to him, number
5 one. And the supervisors are well aware what trucks
6 are in working condition and what trucks aren't in
7 good working condition. It just so happened that I
8 had the worst vehicle in the station in my slot
9 number on the lineup.

10 Q. How is that selected? Who selects what
11 vehicle employees get, the drivers get?

12 A. Usually, they have someone on the night
13 shift do the lineup after they are all done at
14 night. Now, who did it that night or what trucks
15 were missing, because a lot of trucks aren't in or
16 whatever -- my truck, when I came in, was in the
17 slot that I usually work from; and I was kind of
18 getting a little bit of snickering from everyone
19 because they knew what vehicle I had. So, I mean, I
20 could tell I was in for a rough day right off the
21 bat. As soon as I got in the truck, the key wasn't
22 there. That meant I had to work out of the back of
23 the door every single stop to make my day miserable.
24 Then the truck broke down. I mean, I told you

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1 everything about that.

2 Q. But you don't have any proof that
3 Mr. Crossken was involved in selecting that truck
4 for you; is that right?

5 A. No, but I have proof he tried to fire me
6 twice prior.

7 Q. Okay, fine. Now, you said that there were
8 skids by the entrance door. Do you have any proof
9 that Mr. Crossken was somehow involved in putting
10 skids by the entrance door?

11 A. I can't prove it, that's just my opinion.

12 Q. And the minor accident that occurred, can
13 you explain to me in your own terms what happened
14 that caused that minor accident?

15 A. Well, I could draw it out.

16 Q. Yeah, sure.

17 A. I mean, I don't know how to -- that would
18 be a lot easier for me.

19 MR. PERLMAN: Let the record reflect
20 that I am handing the witness a piece of paper and
21 pen.

22 A. (Drawing.)

23 MR. PERLMAN: Off the record.

24 (Brief recess.)

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1 MR. PERLMAN: Let's mark this.

2 (Marked, Exhibit 45, Witness's diagram.)

3 MR. PERLMAN: All right, back on the
4 record. We took a brief recess during which
5 Mr. Pizzuto drew a diagram. I'm going to ask him
6 some questions about Exhibit 45. We have marked it
7 as Exhibit 45.

8 Q. So I think the question was, I wanted you
9 to describe to me how the, quote-unquote, minor
10 accident occurred on February 24, 2003; and I'd like
11 for you to -- if you need to use this diagram to
12 explain it, please do, but I'd like to hear your
13 explanation of how it occurred.

14 A. The way the building was set up, if you
15 approach from the main parking lot, you pass this --
16 the customer service area.

17 Q. Is this the main parking lot right here
18 (indicating)?

19 A. Yes.

20 Q. Okay. So I'm going to mark the area with
21 an A, the area that's the main parking lot.

22 A. After you went through the main parking
23 lot, about three quarters of the way down you would
24 see a ramp or dock for all the vehicles to enter or

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1 exit.

2 Q. How many lanes was that ramp?

3 A. Just one. It was very narrow. It was
4 maybe one and a half widths of a normal truck.

5 Q. Was there an in ramp and an out ramp or
6 just one ramp?

7 A. The other ramp was at the opposite end of
8 the building.

9 Q. And that was for cars to go out?

10 A. Yeah, that was specifically for trucks to
11 go out, yeah. And when they were doing a lineup,
12 this was all open. This was all the dock space
13 (indicating).

14 Q. So I am going to mark as B what you have
15 identified as the dock space.

16 A. Yeah.

17 Q. Okay.

18 A. This was closest to the ramp that I
19 approached and went up. Once I took a right up the
20 ramp --

21 Q. We are going to mark as C the ramp. This
22 is the ramp here (indicating)?

23 A. Yes.

24 Q. So I'm putting a C where the ramp is.

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26 (Pages 98 to 101)

<p style="text-align: right;">98</p> <p>1 A. I approached the top of the ramp, and the</p> <p>2 afternoon workers were doing their loading into the</p> <p>3 cans in order for the trailers to get loaded; and</p> <p>4 there was numerous skids at the top, maybe a little</p> <p>5 further in the ramp, not exactly the top, but a few</p> <p>6 feet in. And they were stacking all these because</p> <p>7 as trucks came into the dock area, they'd pull them</p> <p>8 off the jacks, and then they'd pull them over here.</p> <p>9 Q. The skids are the same thing as pallets?</p> <p>10 A. Pallets. That's what I meant. So as I</p> <p>11 approached up to the top --</p> <p>12 Q. Are these squares here pallets?</p> <p>13 A. Yes.</p> <p>14 Q. So I'm going to put D's on each of these</p> <p>15 pallets.</p> <p>16 A. Now, I don't know if there was three, four,</p> <p>17 two.</p> <p>18 Q. Okay.</p> <p>19 A. I couldn't tell you. I don't remember.</p> <p>20 Q. How many do you think there were,</p> <p>21 approximately?</p> <p>22 A. There was a good -- I want to say at least</p> <p>23 three from the diagram I drew. All right? There</p> <p>24 was at least three. And there was a yellow pole</p>	<p style="text-align: right;">100</p> <p>1 in the way, yeah.</p> <p>2 Q. But you could have gotten out of the truck</p> <p>3 and moved the skids, right?</p> <p>4 A. Could I have? Yeah. To be honest with</p> <p>5 you, I could have, but I had vehicles behind me and</p> <p>6 everything. You know, they are all waiting to get</p> <p>7 in. Yeah, I could have, but I thought I could make</p> <p>8 it through.</p> <p>9 Q. Between the skids and the pole?</p> <p>10 A. Between the skids and the pole.</p> <p>11 Q. And it didn't happen that way, you scraped</p> <p>12 the pole, correct?</p> <p>13 A. Yeah, I scraped the pole. I got yellow</p> <p>14 paint on the vehicle. There was no dents, there</p> <p>15 was -- there was not even a dent in the vehicle. It</p> <p>16 was basically just a yellow pole on my bumper. It</p> <p>17 wasn't even on the side of the truck. It was the</p> <p>18 black bumper on the front side, and it just caught a</p> <p>19 little bit of the yellow paint.</p> <p>20 Q. Right.</p> <p>21 A. And I reported it and --</p> <p>22 Q. Do you know if any -- you said there were</p> <p>23 trucks behind you. Do you know if any of the trucks</p> <p>24 behind you had the same problem as you?</p>
<p style="text-align: right;">99</p> <p>1 next to the ramp on the right-hand side going up on</p> <p>2 the side --</p> <p>3 Q. So I'm going to put a little marker here,</p> <p>4 an E, and that will be the yellow pole.</p> <p>5 A. Now, what I tried to do is I tried to go</p> <p>6 inside the pallets as close as possible and avoid</p> <p>7 them, and evidently I caught the yellow pole on the</p> <p>8 side. I didn't catch it much. I basically scraped</p> <p>9 the paint off of the pole onto the side of the</p> <p>10 vehicle. And I immediately reported it as I hit it,</p> <p>11 and I was given a preventable accident warning</p> <p>12 letter.</p> <p>13 Q. Do you think it was inappropriate for you</p> <p>14 to get a warning for that accident?</p> <p>15 A. Well, no, I didn't want any special</p> <p>16 treatment. You know? But considering the day I had</p> <p>17 and everything, I mean, there's other -- there's</p> <p>18 ways of handling it; and I don't think they handled</p> <p>19 the situation the way they could have, especially</p> <p>20 knowing that was my first day back from all my</p> <p>21 problems that were going on and everything.</p> <p>22 Q. But it was an accident, right?</p> <p>23 A. It was an accident. Was it preventable? I</p> <p>24 think it was preventable if all those skids weren't</p>	<p style="text-align: right;">101</p> <p>1 A. No, no, but I don't know if there's been</p> <p>2 any -- I know there's been accidents in the past,</p> <p>3 but I don't know specifically who it was or where it</p> <p>4 was or --</p> <p>5 Q. I'm just saying that specific day, because</p> <p>6 according to your testimony, there were pallets on</p> <p>7 the ground, and you had a hard time getting between</p> <p>8 them and the yellow pole. I'm wondering if you know</p> <p>9 if any of the trucks that followed you had the same</p> <p>10 problem.</p> <p>11 A. No, I don't. I wasn't paying attention to</p> <p>12 them. By the time I hit that, I just had to get</p> <p>13 around and then park my vehicle. I wasn't watching</p> <p>14 anything else. I was kind of aggravated about the</p> <p>15 whole situation, as you would be, I would guess, I</p> <p>16 would hope so.</p> <p>17 Q. And of course, I mean, you are not</p> <p>18 contesting that Airborne or Airborne management put</p> <p>19 those pallets in the way to somehow harass you?</p> <p>20 A. No, absolutely not, but it was -- I tell</p> <p>21 you what, it must have been a full moon because</p> <p>22 everything I went through during the course of that</p> <p>23 day, I'm not going to say it was a coincidence, it</p> <p>24 wasn't a coincidence, it happened for a reason. Was</p>

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102	<p>1 Steve at fault? He was the guy in charge of</p> <p>2 everyone. He was the guy that had to answer to</p> <p>3 everyone. He instructed his supervisors. So if he</p> <p>4 didn't leave -- if the supervisors didn't leave that</p> <p>5 area clear, which they should have all the time --</p> <p>6 and they're always floating around in there -- then</p> <p>7 I wouldn't have gotten into that accident in the</p> <p>8 first place.</p> <p>9 Q. But my question is a little different. You</p> <p>10 don't think those were put there deliberately to</p> <p>11 somehow mess with you, right?</p> <p>12 A. No, no, I'm not going to start assuming</p> <p>13 things. If I were to give you my opinion, it's</p> <p>14 such -- you know, it's such -- the way I would</p> <p>15 explain it, I could not say he did it or she did it.</p> <p>16 I'm just telling you what the condition of the</p> <p>17 building was at the time and the type of day I had</p> <p>18 prior.</p> <p>19 Q. In fact, you don't know who put the skids</p> <p>20 in the --</p> <p>21 A. I have a good idea what happened. The</p> <p>22 straight job comes up, and usually they back up on</p> <p>23 the ramp. They unload everything right here</p> <p>24 (indicating). And then when the guys get a chance,</p>	104	<p>1 all.</p> <p>2 Q. Now, Crossken left the facility in March</p> <p>3 2003; is that right?</p> <p>4 A. Yes.</p> <p>5 Q. And after that you had no dealings with</p> <p>6 him; is that right?</p> <p>7 A. Do you have the exact date that Steve</p> <p>8 Crossken left?</p> <p>9 Q. I'm not sure I have it right in front of</p> <p>10 me, but after he left the facility, you didn't have</p> <p>11 any dealings with him?</p> <p>12 A. No, not at all.</p> <p>13 Q. And you no longer worked with him at that</p> <p>14 point?</p> <p>15 A. No, Joe Hamilton was the interim.</p> <p>16 Q. Interim?</p> <p>17 A. Interim. He came in after Crossken.</p> <p>18 Q. All right. So he came in after Crossken,</p> <p>19 Joe Hamilton. He's a defendant in the case, as is</p> <p>20 Steve Crossken?</p> <p>21 A. Yeah.</p> <p>22 Q. When did you first meet Joe Hamilton?</p> <p>23 A. I worked for Hamilton probably in, I want</p> <p>24 to say in about '96.</p>
103	<p>1 they put it on the belt, and they run it up the top</p> <p>2 of the belt so they can load the cans and send them</p> <p>3 off. You know?</p> <p>4 Q. So those skids ended up there as part of</p> <p>5 the normal course of business?</p> <p>6 A. Yeah, but normal course of business, when</p> <p>7 the individuals unload that truck, it's their</p> <p>8 responsibility to get rid of the freight. Now, if</p> <p>9 you were going in your driveway, double driveway --</p> <p>10 all right? -- and you saw stuff all over the place,</p> <p>11 and your kids put all that stuff in the driveway,</p> <p>12 and you came home and you saw all that stuff in the</p> <p>13 driveway, what would you say to your kids? "Why is</p> <p>14 the driveway blocked?"</p> <p>15 Q. My question to you -- I think we are on the</p> <p>16 same page here, I really do.</p> <p>17 A. Yeah, I think so.</p> <p>18 Q. But I am just trying to figure out from</p> <p>19 you, are you contesting that somebody at Airborne</p> <p>20 deliberately put the pallets in your way to mess</p> <p>21 with you?</p> <p>22 A. I'm going to say no, I'm going to say no.</p> <p>23 Q. That's all I wanted to know.</p> <p>24 A. I just want to get my point out. That's</p>	105	<p>1 Q. How did your paths cross at that time?</p> <p>2 A. Joe was a supervisor at the North Shore</p> <p>3 station on Concord Street at the time.</p> <p>4 Q. Did you work directly with Joe?</p> <p>5 A. At times. I was on the night shift, the</p> <p>6 day shift, depending on, like I said, who had</p> <p>7 seniority, who had days, and who didn't have enough</p> <p>8 seniority worked nights. So sometimes I got</p> <p>9 fortunate and I was able to get a day shift. Most</p> <p>10 of the times I was on nights.</p> <p>11 Q. What did you think of Joe when he was your</p> <p>12 supervisor in the '90s?</p> <p>13 A. I got along with Joe for the most part. I</p> <p>14 didn't have any major problems with Joe.</p> <p>15 Q. You thought he was a good guy?</p> <p>16 A. At first, yeah.</p> <p>17 Q. Okay.</p> <p>18 A. At first.</p> <p>19 Q. Did things change in your relationship with</p> <p>20 Mr. Hamilton in the time that he was your</p> <p>21 supervisor? I'm not talking about when he became</p> <p>22 plant manager. I'm talking about the time when he</p> <p>23 was your supervisor. Did you get along?</p> <p>24 A. Joe really wasn't a major problem. I got</p>

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<p style="text-align: right;">106</p> <p>1 along with Joe for the most part, I will say that.</p> <p>2 Q. When did you stop working together at --</p> <p>3 let me strike that. There was a time at which you</p> <p>4 didn't work together after that initial period?</p> <p>5 A. Yeah, one specific incident. I went out in</p> <p>6 the afternoon, and I had an agreement with Joe that</p> <p>7 I needed to come in early and leave an hour early on</p> <p>8 the night shift. He said, "Okay, as long as your</p> <p>9 route's done."</p> <p>10 So basically, I didn't take my lunch or</p> <p>11 anything. I ran around like crazy, got back to the</p> <p>12 station and off-loaded my truck, did my thing, left.</p> <p>13 A few days later he gave me a warning letter for</p> <p>14 failure to -- (Witness reviews document.) Excuse me.</p> <p>15 I will just read it because I know it's in here</p> <p>16 somewhere.</p> <p>17 MR. PERLMAN: Let the record reflect</p> <p>18 that the witness is looking at Exhibit No. 2.</p> <p>19 A. "Failure to protect start time."</p> <p>20 Q. What date is that?</p> <p>21 A. That's on 1/14/98.</p> <p>22 Q. That's Joe Hamilton that wrote that?</p> <p>23 A. Yes.</p> <p>24 Q. Other than that, did you have any problems</p>	<p style="text-align: right;">108</p> <p>1 He says -- I said, "I'm going to work and give it my</p> <p>2 best shot, Joe, and try to put it past me." And</p> <p>3 that was basically how we met again in that first</p> <p>4 day.</p> <p>5 Q. Didn't Joe tell you that as far as he was</p> <p>6 concerned, he was going to wipe the slate clean for</p> <p>7 you?</p> <p>8 A. Not to wipe the slate -- as far as a new</p> <p>9 start, me and him?</p> <p>10 Q. Yes, that you were going to start over from</p> <p>11 square one.</p> <p>12 A. Oh, yeah, yeah.</p> <p>13 Q. And you were going to get a full chance to</p> <p>14 do your job?</p> <p>15 A. Right, and we both agreed. I mean, it was</p> <p>16 both of us, it was a mutual type agreement.</p> <p>17 Q. And at that time did you think Hamilton was</p> <p>18 a pretty good guy?</p> <p>19 A. Yeah, I mean, I don't know if he was a good</p> <p>20 guy, but I respected him because he was a manager.</p> <p>21 You know?</p> <p>22 Q. Now, things went pretty well for a while</p> <p>23 after Mr. Hamilton took over; isn't that right?</p> <p>24 A. Yeah, I don't know how long, but Joe came</p>
<p style="text-align: right;">107</p> <p>1 with Joe Hamilton?</p> <p>2 A. Other than that, no; but, I mean, I lost a</p> <p>3 little trust in him after that incident.</p> <p>4 Q. And how long after that incident did you</p> <p>5 work with Joe?</p> <p>6 A. Not too long, because Joe was going from</p> <p>7 station to station; so he really wasn't in one spot.</p> <p>8 He would go from North Shore to Needham to Boston.</p> <p>9 He was jumping around quite a bit, so I didn't have</p> <p>10 a lot of contact with him.</p> <p>11 Q. But he became the manager of the plant in</p> <p>12 which you were working in March 2003?</p> <p>13 A. Yes.</p> <p>14 Q. What did you think of him at that time?</p> <p>15 A. Well, the first day Joe took over, me and</p> <p>16 him had a great conversation, we talked.</p> <p>17 Q. What did you guys say to each other at that</p> <p>18 time?</p> <p>19 A. He approached me. He asked me to go into</p> <p>20 the office. I told him, "Joe, you know me, I know</p> <p>21 you. I don't have any problems with you. I don't</p> <p>22 want any future problems. What's done is done, I</p> <p>23 can't do anything about it, with Crossken, and I</p> <p>24 just want to move on." And he said, "That's fine."</p>	<p style="text-align: right;">109</p> <p>1 February; is that what we said, or March?</p> <p>2 Q. March.</p> <p>3 A. March. I want to say -- I would probably</p> <p>4 say about six weeks, five or six weeks.</p> <p>5 Q. Things went well for five or six weeks?</p> <p>6 A. Yeah, it was approximately that.</p> <p>7 Q. Then what happened after that?</p> <p>8 A. Then what happened was I was having freight</p> <p>9 disappear from my truck. First when I was scanning</p> <p>10 my freight out for delivery -- these special</p> <p>11 accounts that we deliver, there're numerous</p> <p>12 packages; and in the process we try to put them</p> <p>13 aside on the truck or put them in a spot where</p> <p>14 they're not going to get in the way of all the other</p> <p>15 stuff going in, put them on the floor. And we had</p> <p>16 to scan them as we were going.</p> <p>17 And I happened to have the post office</p> <p>18 in Lawrence. So upon scanning all my other freight,</p> <p>19 I always waited to scan the bulk packages for the</p> <p>20 most part last, because I had every one that I had</p> <p>21 to be accountable for. And I was having some</p> <p>22 problems with my count, and I was getting warning</p> <p>23 letters for out-for-delivery failures, because when</p> <p>24 a package came down the belt, if I didn't scan that</p>

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<p style="text-align: right;">114</p> <p>1 Q. Okay. And that issue got resolved by</p> <p>2 exactly how you said it. You might have gotten held</p> <p>3 up, but through your calls to Bill McClellan and</p> <p>4 Chris Demmons and through the fax that you received,</p> <p>5 you were able to clear that issue up; is that right?</p> <p>6 A. Yeah, but that was just one issue of</p> <p>7 missing freight.</p> <p>8 Q. Okay. Are there any other warnings on the</p> <p>9 list about missing freight after Mr. Hamilton came</p> <p>10 in?</p> <p>11 A. No, because when I got in the building --</p> <p>12 I'm going to say no, and I want to elaborate on it,</p> <p>13 because this was going on for a couple weeks. And</p> <p>14 every time I would notice a piece missing, and it</p> <p>15 wasn't scanned properly after I scanned it -- no, it</p> <p>16 wasn't scanned out for delivery -- all right? -- I</p> <p>17 was getting -- I was talking to Joe regarding this;</p> <p>18 and he says, "Well, it's showing up on the sheet as</p> <p>19 delivered but not out for delivery." I said, "What</p> <p>20 the heck's is going on here, Joe? If I don't scan</p> <p>21 it out for delivery, I don't know what's on my</p> <p>22 truck. Someone could put it on my truck when I go</p> <p>23 download my scanner, and then all of a sudden it</p> <p>24 pops up on my truck when I go to do the post office</p>	<p style="text-align: right;">116</p> <p>1 mistaken scanning issue?</p> <p>2 A. I think it was a push to get me out the</p> <p>3 door.</p> <p>4 Q. Push by whom?</p> <p>5 A. Well, whoever you want to call it, Airborne</p> <p>6 management.</p> <p>7 Q. Who in management was trying to push you</p> <p>8 out the door?</p> <p>9 A. Well, I can't say specifically; but if you</p> <p>10 look at the reasons for my warning letters and you</p> <p>11 look at the grievances that I filed with the union</p> <p>12 that never got settled the way they should have,</p> <p>13 someone in that list of people --</p> <p>14 Q. But Joe Hamilton was your supervisor,</p> <p>15 right?</p> <p>16 A. Yeah.</p> <p>17 Q. And he was making all the decisions about</p> <p>18 your employment and your supervision at that point,</p> <p>19 right?</p> <p>20 A. Yes.</p> <p>21 Q. Do you think Joe Hamilton was out to get</p> <p>22 you?</p> <p>23 A. Well, let me back this up. When --</p> <p>24 Q. Well, no, I want to know, do you think Joe</p>
<p style="text-align: right;">115</p> <p>1 batch. So it's going to show up not out for</p> <p>2 delivery."</p> <p>3 Do you know what his reply was to me?</p> <p>4 "You're paranoid." That's how he answered me.</p> <p>5 "You're paranoid." Knowing that I came back from</p> <p>6 short-term disability from the union and the</p> <p>7 company, my supervisor is telling me I'm paranoid.</p> <p>8 And he knows that I have mental problems and medical</p> <p>9 conditions.</p> <p>10 Q. Were you ever diagnosed with paranoia?</p> <p>11 A. Not paranoia, no. I came off short-term</p> <p>12 disability through the union and through the</p> <p>13 company, and it's all documented what my problems</p> <p>14 were.</p> <p>15 Q. Right. Do you think you were being</p> <p>16 paranoid about your shipments?</p> <p>17 A. No, because I've got a good head on my</p> <p>18 shoulders. I know what I had on my truck, what I</p> <p>19 didn't have.</p> <p>20 Q. You think somebody was trying to mess with</p> <p>21 you?</p> <p>22 A. Do I think? Yeah. Can I prove it? No.</p> <p>23 Q. Why do you think somebody was trying to</p> <p>24 mess with you with this whole missing freight or</p>	<p style="text-align: right;">117</p> <p>1 Hamilton was out to get you?</p> <p>2 A. Yes, absolutely.</p> <p>3 Q. Why do you think that?</p> <p>4 A. I want to go back two weeks prior to the</p> <p>5 24th when that happened. Joe Hamilton says he was</p> <p>6 worried about me, he wanted me to go for a drug and</p> <p>7 alcohol test at 61 Main Street. And I said, "Joe, I</p> <p>8 have some medical issues, nothing to do with drugs</p> <p>9 and nothing to do with alcohol." I said, "It's all</p> <p>10 documented, my past medical experiences. You people</p> <p>11 have all the information regarding everything." He</p> <p>12 says, "Well, you are acting too suspicious, you need</p> <p>13 to go and do a drug and alcohol test."</p> <p>14 And the reason why Joe did that was</p> <p>15 because there was two ways you could take a drug and</p> <p>16 alcohol test. One was random. All right? One</p> <p>17 stated that -- through the union and through the</p> <p>18 company, they made an agreement, so many people had</p> <p>19 to get a random drug test every two, three months.</p> <p>20 They decided the date. And the other one was for</p> <p>21 suspicious behavior. So Joe took it upon himself to</p> <p>22 give me a suspicious behavior drug and alcohol test.</p> <p>23 All right?</p> <p>24 Q. Were you exhibiting suspicious behavior at</p>

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1 April 8, 2003?

2 A. Because I was seeing my primary care
3 physician, and I wanted these records along with my
4 primary care physician to state that I had been
5 going through this problem for whatever time, and I
6 wanted to make sure that I had documentation backing
7 it up.

8 Q. What were you trying to back up?

9 A. That I was very ill and depressed and, you
10 know, I was having some serious emotional issues.

11 Q. Was that because you had planned on going
12 out on another leave?

13 A. Not so much a leave, but I wanted to see
14 what this individual was writing about me, because
15 he was tied to the Teamsters.

16 Q. Why did you want to see what this
17 individual was writing about you?

18 A. Because the Teamsters forced me back to
19 work. I had a meeting with Dr. Heckler, I had a
20 meeting with Larry Libby, the drug and alcohol
21 counselor, and I had a meeting with another
22 individual that was supposed to be from Lahey
23 Clinic, but I can't recall his name. So we all met.

24 (Interruption.)

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1 A. I will go back to that. So we all met, Dr.
2 Heckler, Larry Libby, and this other individual from
3 Lahey Clinic.

4 Q. When was this?

5 A. This was prior to me coming back in
6 February.

7 Q. So you're saying the Teamsters forced you
8 to go back to work. Are you saying that you weren't
9 ready to go back to work at that time?

10 A. Well, let me elaborate on it.

11 Q. I will let you elaborate, but I need you to
12 answer my question.

13 A. Okay.

14 Q. Are you saying you were not ready to return
15 to work at the time you returned?

16 A. Yes.

17 Q. Now, go ahead. If you want to elaborate on
18 the meeting, I welcome you to do that.

19 A. I spoke to Dr. Heckler, who was the head
20 doctor for the Teamsters. I spoke with Larry Libby,
21 and I spoke with that individual from -- I believe
22 it was the Lahey Clinic. So in the process of
23 discussing my personal issues and my problems and
24 what I had gone through in the last few months being

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1 on disability, Dr. Heckler asked me my history of my
2 family, asked me the history I've had up to date.
3 And he asked me why I couldn't go back to work. And
4 I felt like I was being backed into a corner. And
5 it was put to me two or three times by Dr. Heckler
6 that "We need a return date to work." And I -- just
7 out of frustration, I says, "Listen, you people want
8 me to go back to work? I'll go back to work. But
9 if I can't do the job, I want to at least -- you
10 know, I want you to hear me out again. I want to at
11 least be able to be out of work and be able to
12 support my family."

13 Q. So in April you were trying to plan for
14 that, if that was the case?

15 A. Well, if I had to go out again -- which I
16 didn't want to, but they gave me no choice. They
17 backed me into the corner, and they said, "Give me a
18 date." I said, "Pick a date." "February 24 okay?"
19 I said, "Yeah, okay, go ahead. That's fine."

20 Q. Did they tell you why they were forcing you
21 to return to work?

22 A. Yeah. Tom Sarjeant did about a week prior
23 to that.

24 Q. What did he say?

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1 A. "They don't want you on short-term
2 disability anymore."

3 Q. Who is "they"?

4 A. Whoever his boss is.

5 Q. The Teamsters?

6 A. Yeah.

7 Q. The Teamsters didn't want you on short-term
8 disability?

9 A. No, they can't keep paying for my
10 short-term disability.

11 Q. So you went back to work, and in April you
12 started gathering some medical information. So you
13 went to the Tewksbury Mental Health Associates
14 office; is that right?

15 A. Yes.

16 Q. And just to finish out this document, you
17 said -- this is what the notes say. It says, "I was
18 out of the office, and he upset the women
19 administrative assistants with his aggressive
20 behavior. I told him this was unacceptable. This
21 incident was reported to Dr. John Heckler."

22 Do you remember any incident -- the
23 incident that's described in this document, sir?

24 A. Yes.

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1 with Mr. Brown, Ben Brown, on July 14, 2003?
2 A. Yes, Ben was doing the check-in that
3 evening.
4 Q. Is there anything about this recap of that
5 conversation that is in any way inaccurate?
6 A. Yes.
7 Q. What's inaccurate about it?
8 A. Well, "He stated that he needed it because
9 someone was out to get him."
10 Q. You didn't say that?
11 A. No.
12 Q. Did you say anything to that effect?
13 A. Nope. I asked him for the printouts.
14 Q. Did you say anything that could be
15 interpreted as that, that you needed the document
16 because somebody was out to get you?
17 A. No.
18 Q. Is there anything else about this document
19 that's inaccurate?
20 A. No.
21 MR. PERLMAN: Exhibit 53.
22 (Marked, Exhibit 53, Memo from B.
23 McLellan to J. Hamilton dated 7/16/03.)
24 Q. I have put in front of you Exhibit 53. I'd

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1 like you to again read that document, and then I'm
2 going to ask you some questions about it.
3 A. (Witness reviews document.) Okay.
4 Q. Do you remember having a conversation with
5 Bill McClellan on Monday, July 14, 2003?
6 A. Yes.
7 Q. Did you tell Mr. McClellan that someone was
8 fucking around with you?
9 A. I didn't use that phrase, but --
10 Q. What did you say?
11 A. I asked Bill, when I was at the post
12 office, first of all, to print out that stuff
13 because my scanner was missing that morning, and I
14 wasn't able to deliver the post office. So I told
15 him, "Bill" -- I phoned NSH and Bill answered the
16 phone. I asked him would he please fax all my post
17 office under P34, which he did, but the count was
18 wrong when it was faxed over to me, and there was a
19 discrepancy in the P34, which was the post office,
20 and a P which he told me that that's where I had my
21 freight under. But the count wasn't correct.
22 Q. What I asked is, did you tell him anything
23 to the effect that somebody was fucking around with
24 you?

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1 A. No.
2 Q. Did you tell him you were going to find out
3 who was, for lack of a better term, fucking around
4 with you?
5 A. No.
6 Q. Did you ever say to him anything to the
7 effect of "Tell the boys 'nice try' at 5 New England
8 Business Center"?
9 A. No.
10 Q. Did you discuss anything with Mr. McClellan
11 on that day about 5 New England Business Center?
12 A. I can't recall, to be honest with you. I
13 want to say yes or no, but I can't recall
14 specifically. I don't know why I would say that
15 stop specifically, but I can't recall.
16 Q. Was that on your route?
17 A. Yes, it's one of my deliveries and pickups.
18 Q. Did something happen on Monday, July 14, at
19 5 New England Business Center?
20 A. I don't know if it was at that stop, but I
21 was missing freight leaving the building, once I
22 realized it was at the post office.
23 Q. Did you insist to Mr. McClellan that
24 someone was trying to frame you or set you up?

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1 A. No.
2 Q. Did you tell Mr. McClellan that you were
3 going to catch the person who was doing this?
4 A. No.
5 Q. So Mr. McClellan is wrong about that?
6 A. I can't speak for him.
7 Q. You can't speak for him, but if he's saying
8 that you said that you are going to catch the person
9 who is doing this, then he'd be wrong?
10 A. I never said it, so I can't speak for him.
11 Q. You are denying that you ever said anything
12 to that effect?
13 A. I didn't say it.
14 Q. Other than the passages that we have just
15 discussed, is there anything else about this
16 document that inaccurately portrays what happened on
17 July 14?
18 A. Well, the way it started out, like I said
19 earlier, as far as the post office freight, the
20 reason why I was in the conversation with Bill in
21 the first place was because my scanner was taken
22 from the cradle upon my departure, which created all
23 this problem in the first place. And it created the
24 bad count that I had at the post office, which

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<p style="text-align: right;">162</p> <p>1 created more problems, because I ended up waiting 45</p> <p>2 minutes for Bill to fax this over.</p> <p>3 So was I mad? Yeah. Was I swearing at</p> <p>4 him? No. But was I having a bad day? Yeah. What</p> <p>5 I said, I can't recall everything specifically, but</p> <p>6 this is pretty accurate without (sic) those</p> <p>7 exceptions.</p> <p>8 Q. So can you, in your best recollection --</p> <p>9 I'm not interested in a characterization. I want to</p> <p>10 know what it is you remember saying to Mr. McClellan</p> <p>11 that day.</p> <p>12 A. First of all, I first made contact with him</p> <p>13 on the phone in the post office; and I asked Bill --</p> <p>14 since I didn't have my regular scanner, I was unable</p> <p>15 to punch in the P34 on my scanner and get the</p> <p>16 download of all the airbills with the freight I had</p> <p>17 scanned in the morning because it was a different</p> <p>18 scanner altogether; and the only way to correct that</p> <p>19 problem was if he were to go in the main system and</p> <p>20 see what all my freight was under P34, he would be</p> <p>21 able to tell the pieces and then fax it over to me</p> <p>22 at the post office.</p> <p>23 Upon doing that, I realized that once I</p> <p>24 got that sheet or two sheets from him, it wasn't an</p>	<p style="text-align: right;">164</p> <p>1 A. There was an instance where I was watching</p> <p>2 my vehicle every single stop out of frustration and</p> <p>3 being afraid that a package was going to be stolen</p> <p>4 out of my vehicle. Every single stop I made, I was</p> <p>5 peeking out of the windows to see who was firing</p> <p>6 away packages out of my truck.</p> <p>7 Q. The question was -- this goes best if you</p> <p>8 listen carefully to the question and you answer just</p> <p>9 the question I asked.</p> <p>10 A. I don't know who was following me.</p> <p>11 Q. Do you have any suspicions as to who was</p> <p>12 following you?</p> <p>13 A. No.</p> <p>14 Q. Did you suspect that the Teamsters were</p> <p>15 following you?</p> <p>16 A. I'm not suspecting anything. I don't know,</p> <p>17 I don't have any proof.</p> <p>18 Q. Did you ever tell Mr. Demmons that</p> <p>19 management is conspiring against you?</p> <p>20 A. No.</p> <p>21 Q. Did you ever tell Mr. Demmons that someone</p> <p>22 was stealing freight from your truck?</p> <p>23 A. Yes.</p> <p>24 Q. Can you tell me when you told Mr. Demmons</p>
<p style="text-align: right;">163</p> <p>1 accurate count that was in my truck. And I said to</p> <p>2 the receiver, the guy working the dock, that I was</p> <p>3 unable to give him his freight because the count</p> <p>4 wasn't proper. And that's their policy; if the</p> <p>5 count isn't right, you need to bring the freight</p> <p>6 back. There was no way of scanning any freight</p> <p>7 because it wasn't in the computer in the first place</p> <p>8 as far as P34, my special customer, with my scanner</p> <p>9 already lost. So I bought back all the freight --</p> <p>10 Q. I'm just asking you what it is you said to</p> <p>11 Mr. McClellan on that date.</p> <p>12 A. Basically, he faxed over the sheets and</p> <p>13 that was it.</p> <p>14 Q. Did you complain to him that you felt like</p> <p>15 you were being set up?</p> <p>16 A. No.</p> <p>17 Q. Did you ever tell Christopher Demmons that</p> <p>18 you'd fix him or you'd get him?</p> <p>19 A. No.</p> <p>20 Q. Did you ever tell Mr. Demmons that you were</p> <p>21 being followed daily?</p> <p>22 A. I can't recollect it, but I was being</p> <p>23 followed.</p> <p>24 Q. Who was following you?</p>	<p style="text-align: right;">165</p> <p>1 that?</p> <p>2 A. When Mr. Demmons was at my truck and I</p> <p>3 downloaded my scanner, and I approached him after he</p> <p>4 was in there scanning all my freight, and I replied</p> <p>5 to him, "Chris, why is my bulkhead door open?"</p> <p>6 "Well," he says, "I was doing" -- I think he said he</p> <p>7 was doing an out-for-delivery scan on all the</p> <p>8 freight to see if everything I put in the truck was</p> <p>9 right. I said, "Well, how can I be held accountable</p> <p>10 for freight in my vehicle if you or anyone else</p> <p>11 takes it upon themselves to go in the vehicle and</p> <p>12 scan everything? If there's another individual</p> <p>13 person in my truck and I don't know about it and</p> <p>14 there's freight missing, how can I be held</p> <p>15 accountable for it?"</p> <p>16 Q. Okay. But again, the question was, the</p> <p>17 question was, did you ever tell him that somebody</p> <p>18 was stealing freight from your vehicle?</p> <p>19 A. I had my suspicions. I don't know if I</p> <p>20 told him directly, but I had my suspicions.</p> <p>21 Q. What were those suspicions based upon?</p> <p>22 A. Cartage reports at the end of the day.</p> <p>23 They were showing pieces that were out for delivery</p> <p>24 scan and weren't being delivered and vice versa.</p>

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166	<p>1 There were pieces that I did scan, and they were</p> <p>2 missing at the end of the day.</p> <p>3 Q. Did you ever get disciplined for missing</p> <p>4 freight other than that one incident on July 24,</p> <p>5 2004 --</p> <p>6 A. Absolutely.</p> <p>7 Q. -- 2003?</p> <p>8 A. Absolutely.</p> <p>9 Q. You did?</p> <p>10 A. Yes.</p> <p>11 Q. When?</p> <p>12 A. Missing freight?</p> <p>13 Q. Yes.</p> <p>14 A. I'd have to go back into all the warning</p> <p>15 letters but --</p> <p>16 Q. I'm talking just about 2003 after</p> <p>17 Mr. Hamilton took over.</p> <p>18 A. Well, you didn't --</p> <p>19 Q. *How many times were you disciplined or</p> <p>20 given a warning for anything having to do with</p> <p>21 missing freight or failure to scan?</p> <p>22 A. I spoke to Joe Hamilton about it. He told</p> <p>23 me I was paranoid.</p> <p>24 Q. Right. So the answer to the question is</p>	168	<p>1 A. I produced them upon printing out</p> <p>2 my download of my scanner.</p> <p>3 Q. I am asking, did you produce those</p> <p>4 documents to DHL, to Airborne Express, in the course</p> <p>5 of this litigation?</p> <p>6 A. I produced them to my lawyer.</p> <p>7 Q. And is it your understanding that your</p> <p>8 lawyer produced those to us?</p> <p>9 A. That's my understanding, yes.</p> <p>10 Q. Are there titles to those documents? What</p> <p>11 are they called?</p> <p>12 A. The end-of-the-day cartage, and what it is</p> <p>13 is a printout of every stop you did, every piece you</p> <p>14 delivered, every piece you picked up, total pieces.</p> <p>15 And that's how they determine if everything on your</p> <p>16 truck was delivered or anything that you forgot to</p> <p>17 scan out for delivery was delivered and you didn't</p> <p>18 scan it out for delivery.</p> <p>19 Q. And what do those records show, in your</p> <p>20 mind?</p> <p>21 A. The records show specific incidents where</p> <p>22 packages were not scanned out for delivery, ended up</p> <p>23 on my vehicle, and then delivered and vice versa.</p> <p>24 There were packages that were scanned out for</p>
167	<p>1 what? I'm asking you --</p> <p>2 A. Chris Demmons, not directly. Joe Hamilton,</p> <p>3 yes.</p> <p>4 MR. PERLMAN: Can you read back my</p> <p>5 question, Joan.</p> <p>6 *(Question read.)</p> <p>7 Q. I want that question but I want you to tell</p> <p>8 me, between the time that Mr. Hamilton took over as</p> <p>9 plant manager and the time you were terminated, how</p> <p>10 many times?</p> <p>11 A. I can't recall.</p> <p>12 Q. Well, can you look at the disciplinary</p> <p>13 summary and tell me?</p> <p>14 A. Sure. (Witness reviews document.) It looks</p> <p>15 like there's one here, "failure to scan shipment."</p> <p>16 Q. Just one. Were you having problems with</p> <p>17 more than just one package?</p> <p>18 A. Yes. I have manifest records to back it</p> <p>19 up. I don't know if they're in the room today.</p> <p>20 Q. Manifest records to back it up?</p> <p>21 A. Yes, I've got manifest records to back up</p> <p>22 everything.</p> <p>23 Q. Is that something that you produced in the</p> <p>24 course of discovery?</p>	169	<p>1 delivery and not delivered.</p> <p>2 Q. How many times?</p> <p>3 A. They were missing.</p> <p>4 Q. How many times?</p> <p>5 A. I want to say it was three or four.</p> <p>6 Q. In the whole month of July?</p> <p>7 A. There was a week or two where it happened</p> <p>8 quite often.</p> <p>9 Q. "Quite often" meaning how often?</p> <p>10 A. Pretty much two or three times a week.</p> <p>11 Q. How many total packages during July 2003</p> <p>12 are we talking about?</p> <p>13 A. Specifically the ones I traced, I think</p> <p>14 there's three.</p> <p>15 Q. Three packages. And you received a warning</p> <p>16 letter regarding only one package, right?</p> <p>17 A. For the out-for-delivery, yeah.</p> <p>18 Q. And if Airborne were going to claim that</p> <p>19 there were packages missing, they would have</p> <p>20 disciplined you for that, wouldn't they?</p> <p>21 A. Well, if they gave me 53 warning letters, I</p> <p>22 would hope they would add the 54th onto there. Yes,</p> <p>23 they would have given me one.</p> <p>24 Q. Right. But they didn't?</p>

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<p style="text-align: right;">170</p> <p>1 A. They didn't, no, they were nice to me that 2 time. 3 Q. Okay. Do you have an idea why they were 4 nice to you? 5 A. I don't know. I can't speak for them. 6 Q. There was a time at which you were sent for 7 drug and alcohol testing, right? 8 A. Yes. 9 Q. Do you remember the day that that happened? 10 A. Yeah, specifically. 11 Q. Do you remember going to the clinic? 12 A. Yes, I do. 13 Q. Who went to the clinic with you? 14 A. A union employee. 15 Q. I'm sorry? 16 A. A union employee, Jimmy O'Brien, Arthur 17 Leveris, and Joe Hamilton. 18 Q. Where is the clinic? 19 A. It's located at 61 Main in Stoneham. 20 Q. How far did you have to travel from the NSH 21 facility to get to that place? 22 A. Ten to fifteen minutes. 23 Q. Who did you travel with? 24 A. All in one vehicle.</p>	<p style="text-align: right;">172</p> <p>1 Q. You didn't do that? 2 A. No. 3 Q. Did you, while you were at the clinic, tell 4 Mr. Hamilton and Mr. Leveris that, quote, you will 5 get yours? 6 A. No. 7 Q. Did you tell Mr. Hamilton and/or 8 Mr. Leveris that you can go to bed at night without 9 worrying? 10 A. No, I can't recall. 11 Q. I'm sorry, you didn't tell them that, or 12 you can't recall whether or not you told them that? 13 A. I can't recall. I can't recall much of 14 that situation because I was very frustrated and 15 irate that they were taking me down for the drug 16 test, number one, and it was not a random, it was a 17 suspicious behavior. So I pretty much kept my mouth 18 shut, and I was very perturbed underneath. 19 Q. So it's possible, though, because your 20 recollection is failing, it's possible you told 21 them, "I can go to bed at night without worrying"? 22 A. I'm not going to say possible, because I'm 23 not a mean person, I would never say that. 24 Q. You would never say that?</p>
<p style="text-align: right;">171</p> <p>1 Q. All four of you? 2 A. Yeah. 3 Q. Did you have any discussions while you were 4 traveling to the clinic with the gentlemen in the 5 car? 6 A. No. 7 Q. You sat in silence? 8 A. You know, small talk. I don't know what it 9 was, though, I couldn't tell you. 10 Q. What happened when you arrived at the 11 clinic? 12 A. We entered and Joe went to the window and 13 said, "We have to give him a drug and alcohol test." 14 Q. Did you drink a number of cups of water 15 while you were at that facility? 16 A. I was thirsty, maybe a few little cups. 17 Q. Did you drink 25 cups of water? 18 A. I don't know if I counted 25 like that. I 19 would say three or four cups, maybe. 20 Q. Just three or four cups? 21 A. Yes. 22 Q. Did you let out a number of belches while 23 you were in the waiting room? 24 A. No.</p>	<p style="text-align: right;">173</p> <p>1 A. No. 2 Q. Because you are not a mean person? 3 A. No. 4 Q. But you don't recall whether or not you 5 did? 6 A. No, I don't. 7 Q. You are just basing your response on the 8 fact that you consider yourself a nice person, 9 right? 10 A. No, on top of it, I have a bipolar 11 disorder, which at the time I was probably in such 12 anxiety and depression at the time or, you know, 13 inability to cope and manage everything, if I did 14 say it, I can't recall it. 15 Q. And I realize that that may have been 16 caused by the state of mind you were in at that 17 point. 18 A. Right. 19 Q. I mean, it might have been caused by the 20 bipolar, but the bipolar disorder causes you to act 21 in ways that probably aren't the best way to act, 22 right? Isn't that true? 23 A. From a personal standpoint? No. 24 Q. What do you mean, "from a personal</p>

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1 standpoint"?

2 A. The disease is very difficult for people to
3 understand, number one --

4 Q. I'm trying to understand it.

5 A. -- because it's internal, it's not
6 external. If I walk around with a broken arm or a
7 broken leg, you can tell that person is having
8 difficulty; but when I have all these things going
9 through me and a chemical imbalance, and then I have
10 people taking me down for a drug test and an alcohol
11 test, which -- against my will, number one, it was
12 against my will. I was told I had to or else I
13 would be fired. I'd be mad --

14 Q. Mr. Hamilton told you that?

15 A. Yeah. I'd be mad in any situation, never
16 mind being faced with the bipolar on top of that and
17 forcing myself into that state of mind -- not
18 forcing myself, but the disease forcing myself one
19 level above everything. So if I was speaking a
20 little bit loud or I was trying to get to the point,
21 yeah, it could have been my bipolar, sure.

22 Q. Okay. Well, I'm just asking you about what
23 you said. I am not making any judgments about why
24 you said it. I just need to know --

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1 A. No, I know it's not personal on your level.
2 I'm just trying to protect myself.

3 Q. More than protect yourself, what I want you
4 to do is answer the questions truthfully; and if you
5 said something, I mean, you will have the
6 opportunity to explain why you said it, but I want
7 to ask you whether or not you said something, and if
8 you said it or if you don't remember whether you
9 said it, I need you to be honest with me about that.
10 That's how this works.

11 A. All right. Well, I've tried to tell you,
12 you know, numerous times that I can't recollect it,
13 and you go on to another question just trying to
14 beat around the question and trying to get me to say
15 something else.

16 Q. No, I am not trying to confuse you. All I
17 am trying to do is get a clear answer, because as we
18 found out, sometimes the questions being asked are
19 not exactly being answered. So what I am trying to
20 do is get the questions I am asking answered.

21 A. Okay. I'm trying to answer them the best I
22 can, so we are all on the same page.

23 Q. What I am asking you is, did you say --
24 regardless of the reason you said it, did you say to

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1 Mr. Hamilton or Mr. Leveris that you can go to bed
2 at night without worrying?

3 A. No.

4 Q. Did you say to Mr. Hamilton or Mr. Leveris,
5 that, quote, you will get yours?

6 A. No.

7 Q. Did you tell Mr. Trudeau, Mike Trudeau,
8 that you think somebody is out to get you and they
9 will pay for it tomorrow?

10 A. No.

11 Q. Do you claim that the drug test that you
12 were given was improper?

13 A. Yes.

14 Q. Why?

15 A. It wasn't random. It was based on
16 suspicious behavior. I was not suspicious from the
17 time I punched in till the time they pulled me out
18 of my work area. All the individuals that I worked
19 around know and will testify that I wasn't acting
20 abnormal other than myself and my daily problems
21 maybe emotionally. So they had no proof that I was
22 acting in a suspicious behavior, but they were out
23 to get me, and they wanted me to get that drug test
24 in so maybe Paul Pizzuto will come up positive from

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1 one of those two and then they'd have an excuse to
2 fire me.

3 Q. You said there were witnesses to your
4 behavior that day. Can you tell me who they are?

5 A. Jim O'Brien, Bill Beekman, B-e-e-k-m-a-n,
6 Jim Sambataro.

7 Q. Anyone else?

8 A. You know, those were the people that worked
9 next to me that whole morning. If I was acting in a
10 strange behavior, I think that they would have
11 notified the right individuals about it.

12 Q. Oh, you think they would have told
13 management that you were --

14 A. Sure, absolutely.

15 Q. -- acting inappropriately?

16 A. Sure.

17 Q. Have you talked to Mr. O'Brien since you
18 brought this case?

19 A. Yes, I have.

20 Q. Have you talked to him in the last month?

21 A. Yes, I have.

22 Q. What did you discuss with Mr. O'Brien?

23 A. How he was doing, how his family was doing,
24 how work was going.

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1 Q. -- on July 21; isn't that right?
2 A. Yes.
3 Q. And you had a meeting that morning when you
4 came back, isn't that right?
5 A. Yes.
6 Q. Do you remember who was present at that
7 meeting?
8 A. When I came back from the drug test?
9 Sorry, is that what you are saying?
10 Q. When you returned from the leave that
11 occurred as a result of the drug tests, you had a
12 meeting that morning -- isn't that right? -- where
13 they told you that the drug test had come back
14 negative.
15 A. I believe that was done on the phone.
16 Q. Okay.
17 A. I believe that was done on the phone. I
18 wasn't at work because I wasn't allowed to work
19 until the test was processed.
20 Q. Right. But then you came back to work?
21 A. Oh, okay. I know what you are saying. All
22 right.
23 Q. And you had a meeting? Didn't you have a
24 meeting that morning?

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1 A. Me and Joe talked.
2 Q. You met with Joe. Was there anybody else
3 at the meeting?
4 A. I can't recall specifics.
5 Q. Was Mr. Howard at the meeting?
6 A. Somebody must have been there because I
7 would not have spoken to Joe without a union rep.
8 Q. Do you remember whether Mr. Leveris was
9 there or not?
10 A. I can't.
11 Q. Do you remember what was discussed in that
12 meeting?
13 A. Yeah. Joe says, "You're going to go back
14 to work." He says -- he also did say if I get out
15 of place -- I don't know his exact words, but if I
16 get out of place or "you do something again," he
17 says, "you're fired, that's it." Those were Joe's
18 words.
19 Q. Did he tell you that he had heard you had
20 been engaging in threatening behavior?
21 A. From his point of view.
22 Q. I'm just asking you if he told you that.
23 I'm not asking you to subscribe to it.
24 A. I don't know what his words were.

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1 Q. Do you remember at all what he said to you
2 about that?
3 A. No. I basically remember him telling me I
4 can go back to work, and upon going back to work, I
5 was going to receive my check at the end of the week
6 for the days missed because it came back negative.
7 Q. I'm going to give you Exhibit 17. It's a
8 little bit longer, so I'm going to give you a little
9 bit of time to look at it. I want you to read it,
10 and I'm going to ask you some questions about it.
11 MR. MULHEARN: Can we take a quick
12 bathroom break, then?
13 MR. PERLMAN: Go ahead.
14 (Recess.)
15 BY MR. PERLMAN:
16 Q. Have you read that?
17 A. Yes. Go ahead.
18 Q. Exhibit 17, Mr. Pizzuto, I put in front of
19 you. Do you remember having a meeting with
20 Mr. Hamilton on the morning of July 21, 2003?
21 A. Yes.
22 Q. And does this document accurately recount
23 what happened in that meeting?
24 A. Yeah, for most of my -- for most of my

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1 recollection, yeah.
2 Q. Is there anything in Exhibit 17 that is
3 inaccurate about what happened in that meeting --
4 A. Yeah, just --
5 Q. -- on July 21, 2003?
6 A. Just all the statements, "he said," "she
7 said," and all that in there.
8 Q. Can you tell me specifically? I want you
9 to do this very carefully. I want you to tell me
10 what parts of this memo are incorrect factually.
11 A. All right. He did say, "I told him his
12 behavior the past three months has become an issue."
13 He never said anything about mood swings, and he
14 never said -- he did say, "You are suffering from
15 paranoid behavior," I know that.
16 Q. Did he tell you --
17 A. He never told me he was not a doctor. He
18 did tell me I made specific threats to four of his
19 supervisors, and he did tell me, "I explained to him
20 the next threat," that he was going to take
21 disciplinary action and fire me.
22 Q. Did you ask him specifically who did you
23 threaten?
24 A. Yes, yes. And he did give me those

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<p style="text-align: right;">186</p> <p>1 people's names; but again, what they were saying, 2 "Wait till I get him," "You'll get yours," "Who is 3 screwing with me," that's all fabrication. 4 Q. So you're saying that Mr. Hamilton told you 5 that this is what these gentlemen said, right? 6 A. Well, that's what he heard from them, so he 7 passed it on to me. 8 Q. Right, okay. The next paragraph. You said 9 since February you had four instances where freight 10 had been ofd-scanned and then not delivered at the 11 end of the day. 12 A. That's correct. And that next sentence is 13 correct. He never instructed the supervisors if he 14 had any issues that he would handle it, because if 15 that was the case, he would have given me the 16 warning letters; they wouldn't have been given to me 17 by supervisors. 18 Q. What warning letters? 19 A. Whatever ones I got since Joe took over. 20 Q. Okay. Looking at the last part of that 21 document, did you tell him that you -- did you 22 discuss your prescribed medication? 23 A. I'm sorry. Where is that? Oh, at the very 24 bottom?</p>	<p style="text-align: right;">188</p> <p>1 disciplining me, which led up to my termination. 2 Q. Did you tell him you'd be filing a 3 harassment case against him? 4 A. I can't recall it, but I may have. I can't 5 recall it. Because if I did, it would be -- it 6 would already be -- it would already have been filed 7 through the steward and the union, but I don't know 8 if there's a copy of that out there if I did. 9 Q. Did you advise Mr. Hamilton that he 10 couldn't take away your freedom of speech? 11 A. No. 12 Q. You didn't say anything about freedom of 13 speech at that meeting? 14 A. No, it was more about my health condition 15 than anything else. 16 Q. The meeting was about your health 17 condition? 18 A. Well, when he went into the paranoid stuff, 19 about that, then he went into me threatening people 20 and everything else, basically that's when he 21 decided -- and that's the same date. That was the 22 same date that he took me for the drug and alcohol 23 test, correct? 24 Q. No.</p>
<p style="text-align: right;">187</p> <p>1 Q. Very bottom. 2 A. I think I had said to them, to Joe, that I 3 was under medical care and was taking prescribed 4 medicines for my condition, and if he needs to call 5 my doctor, that he should do so. I'm almost sure 6 that's what I said. 7 Q. Why did you tell him that? 8 A. Because he was well aware that I was having 9 emotional issues, and he knew I was on prescribed 10 medicines because I came back to work in February of 11 '03. 12 Q. Why was that relevant? 13 A. Because he was calling me paranoid. 14 Q. Any other reason? 15 A. He was saying I was being a threat to him 16 and his supervisors. 17 Q. Any other reason you brought that up? 18 A. Well, I mean, those are the main reasons. 19 Q. Were you trying to explain your behavior to 20 Mr. Hamilton? 21 A. I was trying to be nice to him as much as 22 possible as far as explaining my condition, but he 23 wasn't very responsive in trying to hear what I had 24 to say. He was too built up on the issue of</p>	<p style="text-align: right;">189</p> <p>1 A. No? The drug and alcohol test, what day 2 was that? 3 Q. This is the day you came back from your 4 leave from the drug and alcohol test. 5 A. Okay, yeah, okay. So apparently I came 6 back negative, and he still had issues with me and 7 he didn't take my health under consideration. He 8 just wanted to find things he could blame me for, in 9 addition and up to termination. 10 Q. When he made a comment about your paranoid 11 something, did you think that was a direct reference 12 to your disabilities? 13 A. I can't speak for him. All I can tell you 14 is he was well aware I was out on a short-term 15 disability from both the union and the company. 16 Q. How was he aware of that? 17 A. Because it was well documented I was on 18 FMLA and through Seattle, and he had constant 19 contact with Seattle. 20 Q. But you returned before he started at the 21 plant, right? 22 A. Yeah. He has access to that material. 23 Q. He has access to it, but do you know 24 whether or not he ever looked at it?</p>

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1 A. He knew I was having problems.
 2 Q. How did he know you were having problems?
 3 A. We just talked about them.
 4 Q. But how did he know you were having
 5 problems?
 6 A. Because we had a talk right on his first
 7 day back in work.
 8 Q. When we talked about that conversation,
 9 Mr. Pizzuto, you never said anything about
 10 disability. You talked about discipline.
 11 A. We talked about me taking medications for
 12 anxiety --
 13 Q. You told him about that?
 14 A. -- and medications for depression.
 15 Q. So you told him about that at that meeting?
 16 A. Well, just not to get away from names, I
 17 was given two warning letters by Mr. Crossken back
 18 to back in the same day, and one of them was an
 19 issue that I had all my personal belongings in there
 20 with all my medicines.
 21 Q. Let's try to focus here.
 22 A. Let me just finish, please.
 23 Q. I asked --
 24 A. Can I just finish, please?

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1 Q. Let's have the question read back. I am
 2 not interested in going back to ancient history.
 3 I'm interested in knowing how it is that you
 4 informed Mr. Hamilton that you had what you have
 5 characterized as problems.
 6 A. Okay.
 7 Q. How did Mr. Hamilton know that?
 8 A. April, when they sent me down to 61 Main
 9 Street to get a health physical, a physical for the
 10 DOT, my DOT physical -- do you have a copy of that?
 11 On the bottom of that it states every single ailment
 12 and every problem I was having, so he knew.
 13 Q. Did you hand a copy of that to
 14 Mr. Hamilton?
 15 A. Yes, I did.
 16 Q. When did you do that?
 17 A. I told him the day I left 61 Main Street.
 18 Q. You came in that day and handed it to
 19 Mr. Hamilton?
 20 A. I went in for my DOT physical after work --
 21 while on duty. I took the physical. I brought him
 22 the manila envelope back, and I handed it to him. I
 23 have a copy of it.
 24 Q. Where were you standing? Where was

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1 Mr. Hamilton standing when you handed it to him?
 2 A. He was right in the office.
 3 Q. Was anybody else present at that time?
 4 A. Not that I can recall. So he was well
 5 aware of my problems, just to get back to that
 6 question.
 7 Q. Just from looking at the sheet that you
 8 submitted to the DOT?
 9 A. Oh, yeah.
 10 THE WITNESS: You are well aware of that
 11 sheet, correct?
 12 MR. MULHEARN: You can't be asking me
 13 questions.
 14 A. Yes, yes.
 15 Q. That's what you are relying upon. Is there
 16 anything else you are relying upon for Mr. Hamilton
 17 knowing about your, quote-unquote, problems at that
 18 time?
 19 A. No, I'm not relying. That's definite.
 20 Q. That was it?
 21 A. Yeah. I was given -- excuse me, not to
 22 just -- I was given a two-month DOT card because of
 23 the conditions I was suffering, including sleep
 24 apnea, including being on Provigil, which is a

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1 medicine that keeps you awake, because I was having
 2 a problem with sleeping. And it included anxiety,
 3 depression, inability to cope, all the prescriptions
 4 that I had listed. Plus incidents with Steve
 5 Crossken that were going on there. I was having
 6 problems at work.
 7 Q. At some point during July 2003, did you
 8 call Airborne pretending to be a customer?
 9 A. Yes.
 10 Q. Can you please describe that event to me.
 11 A. The package that was missing, not
 12 delivered, after I departed and punched out to go
 13 home, because of previous problems I had with not
 14 finding freight that was out for delivery or not
 15 delivered, there was this one specific piece that
 16 didn't show up delivered -- okay? -- and I had taken
 17 it out for delivery. So I made a photocopy of that,
 18 or I wrote down the address of it, and I called
 19 customer service, which was the North Shore station.
 20 And I asked the girl working at the North Shore
 21 station, I says, "Can you please give me a point of
 22 delivery," which is a POD, "on the package." And
 23 they couldn't find one, which I knew I had the
 24 package, but somehow it disappeared out of the

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52 (Pages 202 to 205)

<p style="text-align: right;">202</p> <p>1 delivered, but it wasn't, the count was short.</p> <p>2 Q. Mr. Pizzuto, this analysis, the delivery</p> <p>3 analysis, set forth as Exhibit 54 is for July 24,</p> <p>4 2003. Are you confused?</p> <p>5 A. No, I'm not confused at all. This is the</p> <p>6 second -- that's the second incident from the post</p> <p>7 office. There wasn't only one incident. On the</p> <p>8 14th, the 30 pieces from the post office, which it</p> <p>9 states in Exhibit 15, I took back because the count</p> <p>10 was wrong, and apparently --</p> <p>11 Q. So what happened on the 24th?</p> <p>12 A. I don't know exactly what happened. I</p> <p>13 mean, you are putting the exhibit in front of me, so</p> <p>14 you basically have to tell me what's wrong with</p> <p>15 it --</p> <p>16 Q. I am just asking you --</p> <p>17 A. -- so I can correct it.</p> <p>18 Q. I asked you if there was anything about</p> <p>19 this exhibit that supports your claim, and you said</p> <p>20 there was, and I'm trying to figure out what it is.</p> <p>21 A. I don't have the customer sheet as far as</p> <p>22 special customer, so I can't tell you. It's a</p> <p>23 separate sheet from the manifest. If I was able</p> <p>24 to get the special customer manifest -- it's in</p>	<p style="text-align: right;">204</p> <p>1 A. I watched it with everyone else, yeah.</p> <p>2 There was about 40 of us, 50 of us.</p> <p>3 Q. Did you stare at Mr. Hamilton during that</p> <p>4 video?</p> <p>5 A. I was looking at the TV. He might have</p> <p>6 been at the side of the TV, I don't know.</p> <p>7 Q. But you don't recall having stared at him</p> <p>8 during the video?</p> <p>9 A. No.</p> <p>10 Q. Did you squirt water into your mouth from a</p> <p>11 long distance to draw attention to yourself?</p> <p>12 A. No.</p> <p>13 Q. Did you look at Mr. Hamilton as if you</p> <p>14 wanted to fight him?</p> <p>15 A. No.</p> <p>16 Q. Did you ever confront Mr. Hamilton as if</p> <p>17 you were going to fight him?</p> <p>18 A. No.</p> <p>19 Q. Did you ever want to?</p> <p>20 A. No.</p> <p>21 Q. Did it ever cross your mind?</p> <p>22 A. No.</p> <p>23 Q. On the day before you were terminated, July</p> <p>24 24, '03, do you remember Mike Trudeau doing a full</p>
<p style="text-align: right;">203</p> <p>1 addition to this -- then I would be able to see all</p> <p>2 the airbills on there.</p> <p>3 Q. Do you have that, sir? Do you have a copy</p> <p>4 of it?</p> <p>5 A. I don't know. I mean, I have some</p> <p>6 paperwork, my lawyer has some paperwork. I would</p> <p>7 have to go through the paperwork if you need it.</p> <p>8 Q. Do you remember being shown a video, a</p> <p>9 chairman's message video, regarding the Airborne/DHL</p> <p>10 merger?</p> <p>11 A. Yes.</p> <p>12 Q. Did you watch the video?</p> <p>13 A. Yes.</p> <p>14 Q. How long did it last?</p> <p>15 A. It was lengthy.</p> <p>16 Q. Lengthy?</p> <p>17 A. Ten, fifteen minutes.</p> <p>18 Q. Do you remember what was said in that</p> <p>19 video?</p> <p>20 A. Everything that was going to be taken over,</p> <p>21 how DHL was going to transform Airborne into the new</p> <p>22 company, and what was expected from the employees</p> <p>23 and everything else.</p> <p>24 Q. All right. Did you watch the video?</p>	<p style="text-align: right;">205</p> <p>1 truckload audit on your truck?</p> <p>2 A. Yes.</p> <p>3 Q. On that day did you tell Mr. Trudeau that</p> <p>4 "you guys are all going down big-time"?</p> <p>5 A. No.</p> <p>6 Q. Anything to that effect?</p> <p>7 A. No.</p> <p>8 Q. Did you tell Mr. Trudeau you -- they had</p> <p>9 video on all of you?</p> <p>10 A. No.</p> <p>11 Q. Anything to that effect?</p> <p>12 A. No.</p> <p>13 Q. Did you tell him the Feds are on it now?</p> <p>14 A. No.</p> <p>15 Q. Or anything to that effect?</p> <p>16 A. No.</p> <p>17 Q. Did you tell him this will be bigger than</p> <p>18 Cashman?</p> <p>19 A. No.</p> <p>20 Q. Did you tell him anything to that effect?</p> <p>21 A. No.</p> <p>22 Q. Did you ask him, "Do you have a family,</p> <p>23 Mike? Well, your kids will have to get used to</p> <p>24 visiting you in jail"?</p>

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1 A. No.
 2 Q. Did you say anything to that effect?
 3 A. No.
 4 Q. Did you say that "I am going for \$30
 5 million"?
 6 A. No, I wish I was, though.
 7 Q. Did you say anything to that effect?
 8 A. No.
 9 Q. Did you ever say, "Have you ever seen
 10 someone die, Mike"?
 11 A. No.
 12 Q. Did you say anything to that effect?
 13 A. No.
 14 Q. Did you tell Mr. Trudeau that you had seen
 15 someone die?
 16 A. No.
 17 Q. Did you tell him that you saw someone put a
 18 rope around their neck and jump off a chair?
 19 A. No.
 20 Q. Anything to that effect?
 21 A. No.
 22 Q. Did you tell Mr. Trudeau that you're not
 23 afraid of anything or anyone?
 24 A. No.

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1 Q. Did you tell him anything to that effect?
 2 A. No.
 3 Q. Did you tell Mr. Trudeau that they can
 4 shoot you now with one bullet?
 5 A. No.
 6 Q. Did you say anything to that effect?
 7 A. No.
 8 Q. Did you tell Mr. Trudeau that you're not
 9 afraid to die?
 10 A. No.
 11 Q. Did you tell him anything to that effect?
 12 A. No.
 13 Q. Now, regarding those statements I've just
 14 asked you about, did you ever make any of those
 15 statements to anyone, any supervisor of yours at
 16 Airborne?
 17 A. No.
 18 Q. Do you remember talking to Timothy Carter
 19 on the day before you were terminated?
 20 A. No.
 21 Q. Do you remember driving up to the exit door
 22 and seeing Greg Sweatt and Timothy Carter standing
 23 near the exit door?
 24 A. No.

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1 Q. At any point in -- on or about July 24,
 2 2003, did you tell Mr. Carter or say within
 3 Mr. Carter's presence, "You guys are going to get
 4 it"?
 5 A. No.
 6 Q. "Someone is going to get you guys"; did you
 7 say that?
 8 A. No.
 9 Q. Did you say anything to that effect?
 10 A. No.
 11 Q. Do you remember Greg Sweatt ever asking you
 12 who was going to get it?
 13 A. No.
 14 Q. Did you make any threats to Airborne
 15 employees or supervisors in the month of July 2003?
 16 A. No.
 17 Q. Did you say anything to any Airborne
 18 employee or supervisor that could be interpreted as
 19 a threat?
 20 A. No.
 21 Q. Did you say anything to any Airborne
 22 employee or supervisor that could be interpreted as
 23 a threat whether or not you meant it to be a threat?
 24 A. No.

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1 Q. What is the most threatening thing you can
 2 recall saying in July 2003?
 3 A. I can't recall.
 4 Q. On July 24, the day before you were
 5 terminated from employment, do you recall refusing
 6 to engage in a meeting with Mr. Hamilton?
 7 A. Yes.
 8 Q. Can you tell me what happened there,
 9 please.
 10 A. It starts with the evening before, on the
 11 23rd.
 12 Q. On the 23rd?
 13 A. Yes.
 14 Q. Okay.
 15 A. Let's see. I believe it was a Thursday,
 16 because that was payday, and I was supposed to get
 17 my check for the hours that were due for the drug
 18 and alcohol test, I believe three days' pay. And I
 19 was supposed to get it in my payroll check through
 20 the GO, which came in on Thursdays, they distribute
 21 it.
 22 Upon receiving all the checks, all the
 23 employees, I asked Arthur if there was any checks in
 24 there that were mine, in the bag. Usually, there's

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<p style="text-align: right;">210</p> <p>1 a red bag that comes on the belt. And I said, 2 "Well, I didn't get my check for the three days that 3 I missed for the drug and alcohol test"; and Arthur 4 replied, "Oh, that's an issue with the union, you 5 have to grieve it." 6 So I was a little bit perturbed about 7 it, so I went over to my steward at the time, Jerry 8 Halloran; and I asked Jerry, I said, "Jerry, they 9 didn't pay me for the days they owe me, I was out 10 three days. I'm going to lose three days' pay until 11 they have enough time to get me another check." And 12 then when they cut me a check, they take out 28 13 percent of it, because that's how they take it out 14 of corporate. It's like 40 percent of it, 35 15 percent of it. I said, "I don't want it out of 16 that, I want it out of my own check, out of my 17 regular check, out of the paycheck." And then I 18 said, "You'd better go talk to Joe, better find out 19 what's going on with the check." 20 I went on the road, did my route, came 21 back, and it was about 5:30. Jerry Halloran and Joe 22 Quigley were standing towards the side of the clock, 23 the time clock; and I pulled in and they greeted me, 24 I greeted them. And they said, "We have your check,</p>	<p style="text-align: right;">212</p> <p>1 because I have two warning letters. And at that 2 point I says, "You know what? I'm out of here. You 3 do what you want." I gave them back the check, 4 their check, and I left. And then the next day I 5 was fired. 6 Q. All right. 7 A. That's when they fabricated me going up the 8 ramp. That's when they fabricated me, you know, 9 driving into someone, apparently, Arthur Leveris 10 ducking out of the way. He thought I was going to 11 hit him. And he was in the building, and everyone 12 else was outside having coffee and doughnuts. 13 Q. You're saying they fabricated you going up 14 the ramp. Are you saying you didn't go up the ramp 15 that day? 16 A. I did, but I didn't go at a high rate of 17 speed. 18 Q. You said something about coffee and 19 doughnuts. Who was having coffee and doughnuts? 20 A. All the employees were congregating over by 21 the overhead door where the ramp is on both sides. 22 Q. Can you show me where that is on our 23 diagram? 24 A. Sure (indicating).</p>
<p style="text-align: right;">211</p> <p>1 we found it." I said, "Wow, where did that suddenly 2 appear?" He says, "Oh, we don't know, they found 3 it, whatever." It came from Seattle so it had to 4 come in the red bag, there's no way they could have 5 got the check locally. It had to come in through 6 the plane. So that only enforced my thoughts about 7 what was going on that morning and they never gave 8 me the check properly. 9 And then Jerry handed me the check along 10 with Joe, and they said, "Here's the check, but we 11 have a problem. Joe needs you in the office because 12 he wants to give you some disciplinary letters, one 13 being out for delivery, which he wants to give you, 14 and one being for threatening" -- I don't know what 15 the other one was. I think it was an employee, 16 whatever -- not an employee, a supervisor. There 17 was something in there. There was two letters, 18 though, total. 19 And at that point I had all I could take 20 as far as the whole situation that transpired 21 between going for the drug test, finding it 22 negative, then supposedly putting in my check, then 23 not putting in my check, then coming back, getting 24 my check, then telling me I need to go see Joe</p>	<p style="text-align: right;">213</p> <p>1 Q. I'm going to ask you to draw another 2 diagram just because that one is kind of small. And 3 this is an important issue, so I want to make sure 4 we have a very clear diagram. I'm giving you a 5 piece of paper and a black pen, and we're going to 6 have that marked. So if you could just draw me a 7 larger diagram of the facility. 8 A. (Witness complies.) Okay. 9 Q. Thank you for drawing a larger diagram for 10 us. We are going to mark it as your next exhibit so 11 we have it for the record. 12 (Marked, Exhibit 55, Drawing by 13 witness.) 14 Q. Describe what you did on the morning of 15 July 25 when you arrived at the station. 16 A. (Drawing.) 17 Q. So I'm going to write some reference points 18 as you point them out for me. So what did you do 19 first? 20 A. I came in Fallon Road, and I went into the 21 main parking lot here (indicating). Okay? 22 Q. Okay. So you have written "main parking 23 lot"? 24 A. Right.</p>

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1 Q. That's where you came in. And the arrows,
2 is that where you drove your car?
3 A. Yes, this is the pathway. Everything else
4 is parking on each side.
5 Q. All right.
6 A. I went up to the ramp. I stopped right
7 about here (indicating).
8 Q. Okay. So you stopped at the point marked
9 A?
10 A. Yup.
11 Q. Is that correct?
12 A. Yup.
13 Q. All right. And you drove your vehicle up
14 the ramp. There's an arrow in the ramp. That's how
15 you drove the car, right?
16 A. Yes.
17 Q. And you stopped at the point marked A.
18 Okay.
19 A. Yes. Now, to the right of the ramp is the
20 break room right here, drivers' break room.
21 Q. So I'll mark that point. Point B is the
22 drivers' break room; is that correct?
23 A. Correct. Upon entering the ramp, I was
24 about a minute or two from 7 o'clock, I believe that

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1 parking lot was too small.
2 Q. When you stopped your car at Point A, was
3 your car inside or outside the facility?
4 A. I really don't know. It might have been
5 slightly under, slightly over, but not much if it
6 was. I know that there was people congregating on
7 either side of the ramp, you know. I mean, the
8 ramp's only about -- no more than 15 feet wide, so
9 there was people on either side of the ramp. So I
10 wasn't going at a fast rate of speed because if I
11 was, I wouldn't have been able to park where I did.
12 Q. What do you mean by that?
13 A. Well, I mean I would have been obstructed
14 from going in at all.
15 Q. How long is the ramp?
16 A. The ramp might be about 20 feet, about 15
17 feet wide.
18 Q. 20 feet long and 15 feet wide; is that
19 right?
20 A. Yeah, approximately.
21 Q. (Drawing) Okay. Had you done this before?
22 Had you driven up the ramp to punch in before?
23 A. Yes. It was common practice by numerous
24 employees who were running late for work, in order

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1 was the start time. And I left the vehicle, walked
2 over to the drivers' room, punched in right before
3 the drivers' room. The time clock was right there.
4 Q. There's a time clock right here
5 (indicating)?
6 A. Actually, it's in the drivers' room.
7 Q. It's in the break room marked as B?
8 A. Yes.
9 Q. Is where the time clock is?
10 A. Yes.
11 Q. All right.
12 A. After I punched in, I walked back to the
13 vehicle, opened the door, put it in reverse, backed
14 up till I came back in the main parking lot, and
15 made my way out the same way I entered. I had to go
16 to the auxiliary parking lot because these slots
17 were all taken by management, trucks and employees
18 already in the building.
19 Q. So you drove back out the same way you came
20 in, Fallon Road, took a right out Fallon Road and
21 then went to the auxiliary parking lot; is that
22 correct?
23 A. Yes, there's a Ryder Truck Rental there.
24 They leased the space out to them because their

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1 to punch in on time, to avoid get any warning
2 letters that were commonly distributed for being
3 late --
4 Q. My only question was, had you done it
5 before?
6 A. Yes.
7 Q. And you had seen others doing it before?
8 A. Yes.
9 Q. Who had you seen doing it before?
10 A. I can't give you specific names. People --
11 Gary Clemmons.
12 Q. Who else?
13 A. Bob Lahey.
14 Q. Anyone else?
15 A. Wayne Fox.
16 Q. Anyone else?
17 A. Richie Stokes.
18 Q. Richie Stokes?
19 A. I'm going to stop there because I know
20 there was numerous people. I just don't know
21 everyone's name.
22 Q. Yeah, but do you know any other names other
23 than the four you have given me?
24 A. Specifics, no, but I know it was common

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56 (Pages 218 to 221)

<p style="text-align: right;">218</p> <p>1 practice by most of the employees. 2 Q. By most of the employees? 3 A. Most of them that were late on any given 4 day. 5 Q. So how many people would do that on any 6 given day? 7 A. If I had to guess, half a dozen, if I had 8 to guess. 9 Q. Half a dozen employees pulled their 10 personal vehicles up the ramp every day? 11 A. Pretty much. I mean, they may not have 12 pulled -- three-quarters of the way up, halfway up, 13 almost up all the way. I mean, it was common 14 practice. 15 Q. But it was not permitted; isn't that right? 16 A. It was never enforced. 17 Q. But it was wrong to do? 18 A. No one ever told us it was. 19 Q. But I am asking you, was it wrong to do? 20 A. No. 21 Q. It wasn't wrong to do. 22 (Marked, Exhibit 56, First report of 23 injury or illness dated 7/25/03.) 24 Q. Do you recognize Exhibit 56?</p>	<p style="text-align: right;">220</p> <p>1 also write that part? 2 A. (Witness reviews document.) 3 Q. Did you write that? 4 A. Yeah, under distress. 5 Q. You wrote this under distress? 6 A. The psychiatrist part. 7 Q. Okay. It says, "I apologized for pulling 8 up to the overhead door and admitted being wrong for 9 pulling up on ramp." Did I read that correctly? 10 A. I don't know. I was in a -- 11 Q. Did I read that correctly? 12 A. You read it from those words, but -- 13 Q. I read it from what you wrote, correct? 14 A. Yeah, you read what I have written. 15 Q. So you admitted being wrong for pulling up 16 on the ramp, right? 17 A. Well, that's how I wouldn't phrase it 18 after -- after realizing that it was common practice 19 all the time. I mean, I was in a hurry, and once 20 this all happened, I was in a state of a nervous 21 breakdown. 22 Q. It sounds like you're changing the subject, 23 Mr. Pizzuto. All I am asking is, did you admit that 24 you were wrong for pulling up on the ramp?</p>
<p style="text-align: right;">219</p> <p>1 A. (Witness reviews document.) Yes. 2 Q. What is it? 3 A. This is the individual I saw, upon being 4 discharged from Airborne, at the Holy Family 5 Hospital. 6 Q. This is a form, isn't that right, and it's 7 filled out by you? 8 A. Yes. 9 Q. If you look at the handwriting, all the 10 handwriting on this document is yours; isn't that 11 right? 12 A. No. 13 Q. What handwriting is not yours? 14 A. Just give me a second to review it, please. 15 Q. I'm just asking you about the handwriting. 16 I'm not asking you about the content. 17 A. I'm reviewing the handwriting, to be 18 honest. 19 Q. Let me ask you this: Look at the second 20 page. Did you write the portion on the second half 21 of the page, where you describe in detail how the 22 accident or incident occurred? 23 A. Yes. 24 Q. Can you look at the back page. Did you</p>	<p style="text-align: right;">221</p> <p>1 A. No. 2 Q. You never did that? 3 A. No. 4 Q. So why did you write in this statement that 5 you admitted being wrong for pulling up on the ramp? 6 A. Because I was in a state of a nervous 7 breakdown. 8 Q. When you are in a state of nervous 9 breakdown, you say things that are untrue? 10 A. I don't know. I don't remember -- I don't 11 recall anything I said. 12 Q. Okay. Did anybody ever accuse you of 13 attempting to run over a supervisor? 14 A. Yes, Joe Hamilton. 15 Q. When did he say that? 16 A. Upon entering the ramp, prior to punching 17 in, that day that we just wrote the diagram of the 18 building, of the ramp. 19 Q. Okay. When did Mr. Hamilton tell you that 20 you were being accused of trying to run over a 21 supervisor? 22 A. On July 25. 23 Q. Did you have a meeting with Mr. Hamilton 24 that day?</p>

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1 A. Yes.
 2 Q. Did he actually say to you that you tried
 3 to run over a supervisor?
 4 A. Yes.
 5 Q. What did he say exactly?
 6 A. He said that he was informed by Arthur
 7 Leveris, who stated that I came up the ramp at a
 8 high rate of speed and Arthur had to duck for cover,
 9 thinking that I was going to hit him.
 10 Q. When you pulled up the ramp, did you see
 11 Mr. Leveris?
 12 A. I never saw him.
 13 Q. Did you see Mr. Sweatt?
 14 A. I never saw him.
 15 Q. Who did you see?
 16 A. The guys having coffee and doughnuts.
 17 Q. Who were they?
 18 A. I don't know their names.
 19 Q. Do you know anybody? Can you recall
 20 anybody who was present who witnessed that?
 21 A. No, no.
 22 (Marked, Exhibit 57, Memo from G. Sweatt
 23 to J. Hamilton dated 7/25/03.)
 24 Q. Exhibit 57. Why don't you read that brief

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1 document.
 2 A. (Witness reviews document.) Okay.
 3 Q. Do you own or did you own in 2003 a red
 4 Volkswagen?
 5 A. Yes.
 6 Q. What kind of Volkswagen?
 7 A. Jetta.
 8 Q. Is there anything inaccurate about the
 9 statement on Exhibit 57?
 10 A. Other than -- everything but the red
 11 Volkswagen.
 12 Q. Everything's inaccurate except the red
 13 Volkswagen?
 14 A. That's correct.
 15 Q. So you deny that Mr. Sweatt was even on the
 16 dock?
 17 A. Yes.
 18 Q. You don't think he was there?
 19 A. I don't know where he was.
 20 Q. But you claim that he was not there at the
 21 time.
 22 A. He wasn't in my vision. I don't know where
 23 he was.
 24 Q. Were you having a nervous breakdown at the

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1 time?
 2 A. No, I was trying to make the time clock so
 3 I could punch in on time so I wouldn't get a warning
 4 letter for being late.
 5 (Marked, Exhibit 58, Memo from A.
 6 Leveris to J. Hamilton dated 7/25/03.)
 7 Q. Exhibit 58. Mr. Pizzuto, I'd like you to
 8 read this brief document.
 9 A. (Witness reviews document.) Okay.
 10 Q. Is there anything inaccurate about the
 11 statement on Exhibit 58?
 12 A. Everything other than I pulled up onto the
 13 dock and punched in, and that's it.
 14 Q. You don't know what Arthur Leveris told Joe
 15 Hamilton about this incident, do you?
 16 A. Only from what -- the statements I'm
 17 reading here.
 18 Q. And you don't know what Greg Sweatt told
 19 Joe Hamilton, do you?
 20 A. No, I don't.
 21 Q. What happened next?
 22 A. From that point I was -- I reported to my
 23 workstation. I worked for approximately an hour and
 24 a half. A casual approached my truck that they had

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1 called in to do my route.
 2 Q. I'm sorry?
 3 A. Another employee, a casual, approached my
 4 vehicle and told me I wasn't doing the route. And I
 5 responded by saying, "What's up? How come?" He
 6 said, "Oh, they want to see you in the office."
 7 Another employee had to tell me that, by the way.
 8 And also --
 9 Q. Who was the employee?
 10 A. I don't know. It was a casual. I have no
 11 idea. They come and they go every day. They're
 12 doing different routes and everything else. It
 13 could have been a new hire. Anyways, I went into
 14 the office, and Joe was in there, Arthur was in
 15 there, myself, and --
 16 Q. Joe who?
 17 A. -- Jerry. Joe Hamilton, Arthur Leveris,
 18 myself, and I believe it was Jerry Halloran. I'm
 19 almost sure it was Jerry Halloran, those four.
 20 Maybe Arthur wasn't in there. I'm not a hundred
 21 percent sure on Arthur, but I know Joe Hamilton was
 22 there, I was there, and Jerry was there.
 23 Q. What happened at that meeting?
 24 A. Once we sat down, Joe said he was informed

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<p style="text-align: right;">226</p> <p>1 that I tried to run over a couple of his supervisors 2 and he wanted to know what was going on with me; and 3 I explained to him, "Joe, the night before I was 4 supposed to be getting my pay for missing three days 5 on the negative tests; and when I come in, I'm told 6 that I can't have the money until you discipline me 7 first. And I was very upset with that situation, so 8 I left the building. When I come in this morning, I 9 punched in, I worked, and all of a sudden, someone's 10 doing my route, and you're calling me in to 11 discipline me again for whatever reasons." 12 And Joe said he had two warning letters, 13 he would like to give them to me. If I didn't want 14 to cooperate, he was going to fire me. And at that 15 time he still had another letter in his hand, and he 16 had the other two out on the table. And he had 17 already made the termination letter right out. I 18 saw it. It was right in my eyesight. And he said 19 to me, "You're going to be discharged for all the 20 reasons that have led up to this incident" and he 21 wasn't going to tolerate it anymore. 22 Q. What was he talking about, threatening 23 behavior? 24 A. Yeah, all that threatening behavior and</p>	<p style="text-align: right;">228</p> <p>1 terminate me, I'm going to go right to my doctor and 2 I'm going to explain the situation, what's going on 3 here. I can't handle this anymore, emotionally, 4 physically, I'm done, I'm spent." And I drove 5 myself to Holy Family. 6 Q. Did Joe Hamilton ask you if you needed 7 medical help? 8 A. No. 9 Q. Did he offer medical help? 10 A. Well, the way I was going to look at it -- 11 Q. No. Did he offer medical help? 12 A. No, no. 13 Q. Did anybody from the union offer medical 14 help for you? 15 A. No. 16 Q. Did you refuse medical help? 17 A. No. 18 Q. Did you ask for medical help? 19 A. No. 20 Q. What were you going to have your doctor do? 21 A. Admit me somewhere. 22 Q. And were you going to go out on a leave? 23 A. I don't know. I was already terminated by 24 then.</p>
<p style="text-align: right;">227</p> <p>1 paranoia he said I had. And he escorted me to the 2 car along with two other guys, wouldn't allow me to 3 get my personal belongings in the truck, even though 4 I worked an hour and a half under my own power and 5 ability and didn't threaten anyone in any way for 6 that whole hour and a half. But his supervisor 7 thought I was going to shoot him coming up the ramp, 8 which made no sense to me. And I was escorted out 9 to the car, and I left quietly. 10 And then I went down 93, and I was 11 starting to experience a nervous breakdown. I drove 12 to Holy Family Hospital in Methuen, waited there for 13 a couple hours in the emergency room. And then they 14 sent me over to Greater Lawrence Mental Health, 15 where I was -- sat down in front of a counselor, and 16 they asked me what the heck was going on and 17 everything. 18 Q. Do you own a gun? 19 A. No, I have no weapons, sir. 20 Q. Did you tell Mr. -- strike that. Did 21 Mr. Hamilton ask you if you needed medical help? 22 A. After the fact he mentioned something, "We 23 can't help you anymore." And I said, "Joe, you're 24 not a doctor. Okay?" I says, "If you want to</p>	<p style="text-align: right;">229</p> <p>1 Q. Did you say anything to Mr. Hamilton to the 2 effect that you would be going out from your job on 3 FMLA under stress? 4 A. I can't recall what I said. I was in such 5 an emotional state, I was probably having a 6 breakdown right there at the table with all three of 7 them -- all two of them. 8 Q. So that gets a little blurry for you? 9 A. It gets a lot blurrier as I left the 10 parking lot too. 11 Q. So you went down to Holy Family, and you 12 sat in the emergency room? 13 A. Yeah, I sat in the emergency room. 14 Q. Can you tell me what Exhibit 33 is? 15 A. (Witness reviews document.) Yeah, this is 16 the termination letter from Joe. 17 Q. Termination notice from Joe Hamilton? 18 A. Arthur Leveris, actually. 19 Q. Is it from Arthur? 20 A. Yeah, but Joe gave it to me. Arthur signed 21 it and Joe gave it to me. 22 Q. Do you know who made the decision to 23 terminate you? 24 A. Ultimately, I think it was Joe's because he</p>

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<p style="text-align: right;">274</p> <p>1 for an individual, you need to experiment with 2 different medicines. 3 Q. Is there any therapy aspect of the 4 treatment? 5 A. No. 6 Q. It's all medication? 7 A. Right. This is a lifetime thing, plus I do 8 talk to him regarding my condition on a daily basis, 9 how I am doing and everything. 10 Q. Is that therapy or not? 11 A. Yes. 12 Q. So you have therapeutic sessions with Dr. 13 Sadowsky? 14 A. Yes. 15 Q. And how often are your therapeutic 16 sessions? 17 A. Approximately once every month. 18 Q. Have you had a monthly visit with Dr. 19 Sadowsky every month since your diagnosis of 20 bipolar? 21 A. Yes. 22 Q. Have you skipped any sessions with Dr. 23 Sadowsky? 24 A. Just one.</p>	<p style="text-align: right;">276</p> <p>1 manic-depressive state -- that's what the disease 2 does; it puts you in a high manic state or a low 3 depression state. 4 Q. Is there anything -- forgive me for not 5 knowing this, but is there anything that causes one 6 to go from one state to the other? 7 A. I don't know. The disease is not -- 8 there's no cure for the disease. I'll be living 9 with this disease till the day I die. 10 Q. Are you in a manic or depressive state or 11 in between at this point? 12 A. I'm in between somewhere, yeah. 13 Q. Closer to manic or closer to depressive 14 right now? 15 A. I'm more on the high -- as far as 16 energy-wise, that's how I can tell I'm on a manic 17 state, so I'm leaning towards middle to 18 three-quarters right now. 19 Q. Which way? 20 A. To the high manic side. 21 Q. To the manic? 22 A. Yeah. 23 Q. How does your bipolar disorder affect you? 24 A. Lack of concentration, inability to cope,</p>
<p style="text-align: right;">275</p> <p>1 Q. When was that? 2 A. This month. 3 Q. Why did you skip the one this month? 4 A. I just was forgetful, and I did not 5 remember the time of my visit. I called the office, 6 and they rescheduled it for next month. 7 Q. Next month you are going to go see Dr. 8 Sadowsky? 9 A. Yes. 10 Q. Can you please list for me all the 11 medications you have taken for your bipolar 12 disorder. 13 A. Paxil. I wasn't diagnosed with bipolar at 14 that time, but I was under Paxil with Dr. Chang. 15 Wellbutrin, Lamictal, lithium, those others I just 16 gave you a few questions ago. 17 Q. The ones that we discussed at the very 18 beginning of the day? 19 A. Yes, Lamictal, lithium, and Effexor. 20 Q. Have these medications been effective in 21 controlling your bipolar disorder? 22 A. At times. 23 Q. And at times not? 24 A. No, because in the manic state, the</p>	<p style="text-align: right;">277</p> <p>1 forgetfulness. Those are the main ones. 2 Q. Anything else? 3 A. Anxiety. 4 Q. Anything else? 5 A. Those are the main ones. I really can't 6 recall any other ones at this time. 7 Q. And when I ask you, how does the bipolar 8 affect you, I'm asking not just right now, but how 9 has the bipolar affected you for all time. And what 10 I've heard so far is lack of concentration, 11 inability to cope, forgetfulness, anxiety. Are 12 there any other ways in which your bipolar disorder 13 has affected you? 14 A. Not being able to get sleep at night. 15 Q. Anything else? 16 A. No, I can't recall anything else at this 17 time. 18 Q. Did your bipolar disorder prevent you from 19 doing any part of your job responsibilities when you 20 were employed by Airborne Express? 21 A. Yes. 22 Q. And what job responsibilities did your 23 bipolar disorder prevent you from doing while 24 employed at Airborne Express?</p>

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1 A. Sometimes correcting -- sometimes
2 remembering what freight I scanned or didn't scan.
3 Q. Anything else?
4 A. Gas cards leaving the building.
5 Q. Sorry. Gas cards leaving the building?
6 A. It's my job, yeah. I'm supposed to scan
7 the gas card before I leave. I forget. It's lack
8 of concentration, basically; and I forget, you know,
9 with the anxiety and inability to cope, and
10 depending on what I can physically do and what I
11 can't physically do, depending on my state of mind
12 with the bipolar, either being in a manic or
13 depressive state. It really isn't anything
14 specific; you know, it depends on a daily basis.
15 Q. Daily basis.
16 A. Yeah.
17 Q. I'm just trying to get a list of everything
18 that you were prevented from doing at work because
19 of your bipolar disorder. Do I have everything?
20 A. Basically, I went in and did my job every
21 day, I can tell you.
22 Q. Okay, but I just want to know -- you've
23 identified just a couple things. Your bipolar
24 disorder might have affected your ability to

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1 remember freight and your ability to submit the gas
2 card?
3 A. Right.
4 Q. Is there anything else your bipolar
5 disorder prevented you from doing at work or
6 hindered you from doing at work?
7 A. No.
8 Q. Did you ever tell any of the defendants in
9 this case about your bipolar disorder?
10 A. I wasn't diagnosed at the time, but I was
11 being treated for depression, anxiety, and inability
12 to cope, lack of concentration. I was diagnosed
13 with sleep apnea. That affected my sleep. I was on
14 meds for that also.
15 Q. And what were the meds that you were on for
16 that?
17 A. Primidone. P-r-i-m-i-d-o-n-e, I believe it
18 is.
19 Q. I want to talk about that, because in your
20 interrogatory answers that you submitted under oath
21 in this case, you talked about -- you identified
22 certain disabilities -- anxiety and depression,
23 sleep apnea, insomnia, excessive snoring,
24 breathlessness, daytime sleepiness, tremors. Is it

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1 true that those are all essentially symptoms of
2 bipolar disorder?
3 A. That's a doctor that can answer those. I
4 can't answer that.
5 Q. Right, but I'm asking you. You know what
6 your disabilities are, and you said you had two,
7 bipolar and this eye disease you have.
8 A. Right.
9 Q. And I'm saying --
10 A. If you want to consider sleep apnea, you
11 can put that down also.
12 Q. Okay. So sleep apnea might be a separate
13 one. So we have bipolar, we have the eye disease,
14 and we have the sleep apnea, right?
15 A. Yes.
16 Q. Okay. But anxiety and depression are
17 symptoms of the bipolar, so you are including those
18 when you are talking about bipolar, right?
19 MR. MULHEARN: Objection, I mean, to the
20 form of the question. You are asking a medical
21 opinion of a lay person.
22 MR. PERLMAN: Not really.
23 MR. MULHEARN: His belief or
24 understanding --

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1 MR. PERLMAN: He's claiming certain
2 disabilities, and I am trying to figure out what the
3 disabilities are.
4 Q. You have named all your disabilities,
5 correct?
6 A. I don't diagnose my disabilities. The
7 doctors diagnose them. If you want a professional
8 opinion, you should ask a doctor.
9 Q. Yeah, I understand why you might say that
10 after hearing what your lawyer just said, but isn't
11 your claim in this case that you are disabled?
12 MR. MULHEARN: There's no need for that
13 comment. I think that's a valid objection. You are
14 asking for a medical opinion. It's obvious to
15 anybody.
16 Q. Can you answer the question?
17 A. I can't answer the question. My doctor can
18 answer. When you get him in here for a deposition,
19 he can thoroughly answer your questions.
20 Q. Are you disabled, sir?
21 A. In what terms?
22 Q. I don't know, in any terms.
23 MR. MULHEARN: Objection.
24 A. I'm collecting SSI.

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<p style="text-align: right;">282</p> <p>1 MR. MULHEARN: Asked and answered. You</p> <p>2 asked him whether he had disabilities or not. He</p> <p>3 named three. Why are you asking him again?</p> <p>4 MR. PERLMAN: Now he's saying he has no</p> <p>5 idea whether he has disabilities and that's for a</p> <p>6 doctor to determine.</p> <p>7 Q. So your testimony is you have no idea</p> <p>8 whether you have disabilities?</p> <p>9 A. I am currently collecting money on</p> <p>10 disability from the government. Okay? That's all I</p> <p>11 can tell you.</p> <p>12 Q. Okay. That's all you can tell me?</p> <p>13 A. (Witness nods.)</p> <p>14 Q. Okay.</p> <p>15 A. That has been diagnosed, yes.</p> <p>16 Q. Who diagnosed your eye disease?</p> <p>17 A. Give me a second to think of the name.</p> <p>18 It's very difficult. (Pause.) I can't recall the</p> <p>19 name, but it's the eye doctor in Andover, Mass.</p> <p>20 Q. Who diagnosed your sleep apnea?</p> <p>21 A. Dr. Sadrnoori, I believe it is. There's</p> <p>22 some medical reports on that somewhere.</p> <p>23 Q. Is it an Indian name?</p> <p>24 A. I couldn't tell you.</p>	<p style="text-align: right;">284</p> <p>1 at night, which also affected my performance out</p> <p>2 there as far as delivering freight on time.</p> <p>3 Q. That's my next question. Did your sleep</p> <p>4 apnea prevent you from doing any part of your job</p> <p>5 responsibilities at Airborne?</p> <p>6 A. I did it to the best of my capabilities</p> <p>7 with my diagnosis.</p> <p>8 Q. I understand, but what I am asking you is</p> <p>9 whether or not your sleep apnea prevented you from</p> <p>10 effectively performing any of your job duties.</p> <p>11 A. No.</p> <p>12 Q. Did you ever tell any of the defendants</p> <p>13 about your sleep apnea?</p> <p>14 A. Yes. It was on my DOT report.</p> <p>15 Q. Is there any other way in which you told</p> <p>16 the defendants about your sleep apnea?</p> <p>17 A. That's the only one I think we have</p> <p>18 paperwork on here today.</p> <p>19 Q. Did you tell them verbally?</p> <p>20 A. I can't recall.</p> <p>21 Q. Did you ever tell any of the defendants --</p> <p>22 strike that. Did you inform any of the defendants</p> <p>23 about your bipolar disorder? I think I might have</p> <p>24 asked you this before, but --</p>
<p style="text-align: right;">283</p> <p>1 Q. When did you first get diagnosed with sleep</p> <p>2 apnea?</p> <p>3 A. It's in my medical records. I don't know.</p> <p>4 Q. Did you seek treatment for your sleep</p> <p>5 apnea?</p> <p>6 A. Yes.</p> <p>7 Q. What was the treatment?</p> <p>8 A. CPAP machine, CPAP. It's a machine I use</p> <p>9 at night for breathing in order to allow the oxygen</p> <p>10 to go through my airway, and I can breathe properly</p> <p>11 at night. It's forced air. And I also had surgery,</p> <p>12 a tonsillectomy, which was part of that. I also had</p> <p>13 surgery for my throat. There was some type of scar</p> <p>14 tissue in my airway, and I had to have all that</p> <p>15 removed.</p> <p>16 Q. That all happened after you were terminated</p> <p>17 from Airborne Express?</p> <p>18 A. No.</p> <p>19 Q. The surgery happened after you were</p> <p>20 terminated; isn't that correct?</p> <p>21 A. I can't recall.</p> <p>22 Q. How did your sleep apnea affect you?</p> <p>23 A. Waking up constantly at night, being very</p> <p>24 tired during the daytime because I wasn't sleeping</p>	<p style="text-align: right;">285</p> <p>1 A. I can't recall.</p> <p>2 Q. Did you ever tell any of the defendants</p> <p>3 about the eye disease?</p> <p>4 A. I can't recall that either.</p> <p>5 MR. PERLMAN: I'm going to put the</p> <p>6 exhibit sticker over a question about pregnancy. I</p> <p>7 am assuming that's not an issue here.</p> <p>8 THE WITNESS: I'd be a rich man if that</p> <p>9 was the case.</p> <p>10 MR. PERLMAN: That would be a different</p> <p>11 case.</p> <p>12 (Marked, Exhibit 68, Form for Airborne</p> <p>13 re family medical leave.)</p> <p>14 Q. I want you to look at what we have marked</p> <p>15 as Exhibit 68. Can you tell me what this document</p> <p>16 is, sir?</p> <p>17 A. (Witness reviews document.) This is</p> <p>18 Airborne's family medical leave paperwork that I</p> <p>19 filled out in order to qualify for family leave.</p> <p>20 Q. Did you fill this form out?</p> <p>21 A. No.</p> <p>22 Q. Do you know who did?</p> <p>23 A. This was done by Dr. Chang.</p> <p>24 Q. Did you sign this document?</p>

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1 A. Yes.
2 Q. Did you look it over before you signed it?
3 A. Yes.
4 Q. I want you to look at the second and third
5 pages. Is that your signature on both of those two
6 pages?
7 A. Yes.
8 Q. And I just want to understand, this
9 handwriting is not yours in the -- if you look at
10 the first page, Section 2, 3, and 4?
11 A. That's the doctor's portion to fill out,
12 it's not mine.
13 Q. Right. But I am just asking you, is this
14 your handwriting?
15 A. No.
16 Q. Do you think it's Dr. Chang's handwriting?
17 A. I know it's his handwriting.
18 Q. If you look at the second page, "purpose of
19 leave," it says -- before we do, the date on this is
20 10/11/02; isn't that right?
21 A. Correct.
22 Q. Why was it that you were asking for a leave
23 of absence in October 2002?
24 A. Because I was in a state of mental

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1 breakdown.
2 Q. And if you look at the second page and you
3 look in the "purpose of leave" section, you checked
4 the box "because of the employee's" -- the purpose
5 of the leave was "because of the employee's serious
6 health condition which makes the employee unable to
7 perform the functions of the employee's job"; is
8 that correct?
9 A. That's Dr. Chang's opinion.
10 Q. Is that your opinion as well?
11 A. Absolutely.
12 Q. What functions of your job were you unable
13 to perform because of your, quote-unquote, serious
14 health condition?
15 A. It wasn't even functioning in my job. I
16 couldn't get out of bed.
17 Q. Is that all?
18 A. Well, in order to get to work, yeah. I
19 couldn't do any -- I couldn't do any functions at
20 all at home. I was in a state of mental breakdown,
21 and I was trying to get through day to day with all
22 of these symptoms.
23 Q. Did those symptoms subside at some point?
24 A. Never.

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1 (Marked, Exhibit 69, Request to extend
2 weekly disability benefits.)
3 Q. This is 69. Mr. Pizzuto, do you recognize
4 this document?
5 A. (Witness reviews document.) I do.
6 Q. What is it?
7 A. It's a document from the Teamsters or the
8 medical clinic that the Teamsters sent me to in
9 order to collect short-term disability.
10 Q. And this document speaks of an examination
11 on 12/17/02; is that correct?
12 A. What page are you looking at?
13 Q. This is the first page. If you look at
14 "date of current examination." It's about halfway
15 down.
16 A. Yes.
17 Q. Were you examined by a Dr. Sarjeant on or
18 about 12/17/02?
19 A. I saw him for a few sessions.
20 Q. It says, "Additional remarks: His ability
21 to drive is impaired due to his emotional problems."
22 Is that a correct statement?
23 A. Yes.
24 Q. Did you tell Dr. Sarjeant that you couldn't

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1 drive because of your emotional problems?
2 A. Absolutely.
3 (Marked, Exhibit 70, Letter report from
4 Tom Sarjeant dated 4/25/03.)
5 Q. I have put in front of you Exhibit 70. Do
6 you know what this document is, sir?
7 A. (Witness reviews document.) This is Tom
8 Sarjeant's diagnosis.
9 Q. Have you seen this before?
10 A. No.
11 Q. This isn't in your files?
12 A. No.
13 Q. I want you to look at the section that says
14 "Medical History." It says, "Paul reports a long
15 history of problems with 'sleeping' and has been
16 diagnosed with sleep apnea. He notes that after he
17 does not sleep all night, he's completely fatigued
18 during the day, which he believes puts him at risk
19 as a driver." First of all, did I read that
20 correctly?
21 A. No.
22 Q. What did I miss?
23 A. "Puts him at risk as a driver." I do
24 recall telling him --

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<p style="text-align: right;">290</p> <p>1 Q. No, I'm just asking, did I read it 2 correctly? 3 A. Yes, that's what it says here. 4 Q. My next question is, did you tell the 5 doctor that you believed that your sleep apnea put 6 you at risk as a driver? 7 A. I didn't tell him it put me at risk, no. 8 Q. Did you tell him anything along those 9 lines? 10 A. No. 11 Q. Did you tell him that your sleep apnea 12 affected your work performance in any way? 13 A. As far as making service, yeah. 14 Q. What did you tell the doctor about that? 15 A. I told him I was sleeping at lunchtime, 16 setting my alarm on my cell phone in order to wake 17 up from the period of 30 minutes I was trying to 18 take a nap during lunch every day. 19 Q. I just want to talk to you briefly about 20 your family history of mental illness. And I 21 understand that your mom was bipolar? 22 A. Yes. 23 Q. And your brother who is no longer with us 24 was bipolar?</p>	<p style="text-align: right;">292</p> <p>1 Q. Anybody else? 2 A. I don't know if they were evaluated and 3 diagnosed. I don't have any professional opinion on 4 that, I couldn't tell you. 5 Q. Have you ever been treated for any sort of 6 delusional behavior? 7 A. No. 8 Q. Any schizophrenia? 9 A. No. 10 Q. Paranoia? 11 A. No. 12 Q. You have identified some disabilities that 13 you contend you have. How, if at all, were your 14 disabilities affecting you in July of 2003? 15 (Interruption.) 16 MR. PERLMAN: Excuse me. 17 A. Well, my disability itself, are you saying? 18 Q. Yes, sir. 19 A. Well, other than what I was diagnosed from 20 Dr. Chang, it clearly states I was under treatment 21 for apnea, anxiety, inability to cope, lack of 22 sleep, lack of concentration. It clearly states 23 that in all Dr. Chang's reports. 24 Q. I'm just asking you for your lay</p>
<p style="text-align: right;">291</p> <p>1 A. Yes. 2 Q. And you have another brother who has not 3 been diagnosed, but he may be bipolar; is that 4 right? 5 A. I don't know. He has to see a doctor, and 6 this is a doctor's opinion. 7 Q. Do you know of any other members of your 8 family who have suffered from mental illness? 9 A. Immediate? 10 Q. Sure, let's start with immediate. 11 A. Not immediate. 12 Q. How about your father? 13 A. No. 14 Q. Is your father still with us? 15 A. Yes. 16 Q. He does not suffer from any mental illness? 17 A. No. 18 Q. How about any aunts and uncles? 19 A. Yes. 20 Q. Can you tell me your aunt or uncle's 21 relation to you and whether or not they suffer from 22 any mental illness? 23 A. My mother's sister died of -- she was being 24 treated for bipolar also. She passed away.</p>	<p style="text-align: right;">293</p> <p>1 perspective. How is it affecting you, just your 2 behavior and your activities? 3 A. Unless you really go through it and know 4 what the disease does to you, I can't explain it. 5 Q. Okay. Was it making you act any 6 differently than you ordinarily act? 7 A. This type of disease, like I told you 8 before, you're either in a manic state or a 9 depressive state; so if you want to know how I 10 acted, at times I couldn't get out of bed. 11 Q. I'm talking about July 2003. 12 A. You are asking about my disability, 13 correct? 14 Q. Yes. I'm asking how it affected you in 15 July 2003. 16 A. Lack of concentration, inability to cope, 17 anxiety, inability to sleep. 18 Q. When you say "inability to cope," what does 19 that mean? 20 A. Inability to cope with certain situations 21 that might arise. 22 Q. Can you be any more specific? 23 A. Not really. 24 Q. Did any situations arise that you were</p>

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13 (Pages 294 to 297)

294	<p>1 unable to cope with in July 2003?</p> <p>2 A. All I can tell you is I tried to the best</p> <p>3 of my ability with my condition.</p> <p>4 Q. I'm asking you if any situations arose --</p> <p>5 A. I can't recall.</p> <p>6 Q. Did you ever ask Airborne or anybody at</p> <p>7 Airborne for an accommodation for your disability?</p> <p>8 A. When I went on family medical leave.</p> <p>9 Q. And that was in October 2002?</p> <p>10 A. Correct.</p> <p>11 Q. And after that did you ever ask Airborne or</p> <p>12 anybody at Airborne for an accommodation for your</p> <p>13 disability?</p> <p>14 A. I wasn't given the opportunity. I was</p> <p>15 fired.</p> <p>16 Q. But did you ever ask?</p> <p>17 A. No.</p> <p>18 Q. Is there any accommodation that Airborne</p> <p>19 could have given you that would have enabled you to</p> <p>20 do your job?</p> <p>21 A. Yes. I could have went back on short-term</p> <p>22 disability.</p> <p>23 Q. How long would you have needed to go on</p> <p>24 short-term disability?</p>	296	<p>1 workmen's comp and Airborne denied it, yeah, yeah,</p> <p>2 Airborne denied it.</p> <p>3 Q. Right, but were you terminated because you</p> <p>4 invoked your rights under the workers' comp law?</p> <p>5 A. Well, they denied me to go on workmen's</p> <p>6 comp, so I would say so. I filled out a report the</p> <p>7 next day after I was fired, and they denied it,</p> <p>8 which I have a copy of.</p> <p>9 Q. But you had gone on workers' comp before</p> <p>10 that, right?</p> <p>11 A. Briefly, for periods of time when I was</p> <p>12 injured, like every other driver that gets injured.</p> <p>13 I believe if you get my reports from Airborne on</p> <p>14 workmen's comp, you can review them, and I don't</p> <p>15 believe I was out more than eight to ten weeks at a</p> <p>16 time.</p> <p>17 Q. I'm handing you Exhibit 47, which is the</p> <p>18 complaint filed in this case; and I want you to look</p> <p>19 at Paragraph 89. It says, "Airborne terminated and</p> <p>20 otherwise discriminated against plaintiff because of</p> <p>21 his assertion of rights under Massachusetts workers'</p> <p>22 comp laws." Is that a true statement?</p> <p>23 A. Can I just review it? (Witness reviews</p> <p>24 document.) Correct, yes.</p>
295	<p>1 A. I have no idea. That's a doctor's opinion.</p> <p>2 Q. And would you have had to have gone on</p> <p>3 short-term disability just that once, or could it</p> <p>4 have been multiple times?</p> <p>5 A. Again, that's a doctor's opinion.</p> <p>6 Q. How would it have helped you to go on</p> <p>7 short-term disability?</p> <p>8 A. Number one, I wouldn't have got fired from</p> <p>9 Airborne Express by Joe Hamilton when he knew in</p> <p>10 fact that I had problems emotionally.</p> <p>11 Q. Is there any other way that it would have</p> <p>12 helped you to go on short-term disability in July</p> <p>13 2003?</p> <p>14 A. That's a doctor's opinion. I can't answer</p> <p>15 that.</p> <p>16 Q. In your complaint you state the reason that</p> <p>17 you were terminated was that you invoked your rights</p> <p>18 under the workers' comp law. Is that true?</p> <p>19 A. Can you repeat the question.</p> <p>20 Q. Sure. In your complaint you state the</p> <p>21 reason you were terminated from Airborne was that</p> <p>22 you invoked your rights under the workers' comp law.</p> <p>23 Is that true?</p> <p>24 A. I was terminated. Then I applied for</p>	297	<p>1 Q. Would you tell me what actions -- I'm just</p> <p>2 looking for actions here -- that Joe Hamilton took</p> <p>3 to discriminate against you.</p> <p>4 A. He denied me my rights on an unlawful</p> <p>5 termination --</p> <p>6 Q. Anything else?</p> <p>7 A. -- through a disability.</p> <p>8 Q. Anything else?</p> <p>9 A. That was the main one.</p> <p>10 Q. Were there any other acts that Mr. Hamilton</p> <p>11 took to discriminate against you?</p> <p>12 A. Well, they are all in the warning letters</p> <p>13 that he filled out over the years.</p> <p>14 Q. Over the years?</p> <p>15 A. Oh, yeah.</p> <p>16 Q. Mr. Hamilton?</p> <p>17 A. Mr. Hamilton has warning letters in my</p> <p>18 personnel file at Airborne.</p> <p>19 Q. Your testimony is that all of those warning</p> <p>20 letters constitute disability discrimination?</p> <p>21 A. No, not at all.</p> <p>22 Q. Okay, I'm just asking you, what acts did</p> <p>23 Mr. Hamilton do to discriminate against you? And</p> <p>24 you've identified termination. Anything else that</p>

Employee Name (Last, First, M.I.) PIZZATO PAUL J	Employee No. 272 371	Social Security No. 03-21581418
Employee Address 59 Rollins St. Lawrence	City ma	State 01841
Patient's Name (if different from employee)		

1. The information below describes what is meant by a "serious health condition" under the Family Medical Leave Act. Does the patient's condition¹ qualify under any of these categories described? If so, please check the applicable category.

1. ☐ 2. ☒ 3. ☐ 4. ☐ 5. ☐ 6. ☐ None ☐

A "Serious Health Condition" means an illness, injury, impairment or physical or mental condition that involves one of the following:

1. ☒ **HOSPITAL CARE** Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity² or subsequent treatment in connection with or consequent to such inpatient care.
2. ☒ **ABSENCE PLUS TREATMENT**
 - (a) A period of incapacity² of more than three consecutive calendar days (including any subsequent treatment or period of incapacity² relating to the same condition), that involves:
 - (1) Treatment³ two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
 - (2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment⁴ under the supervision of the health care provider.
3. ☒ **PREGNANCY** Any period of incapacity² due to pregnancy, or for prenatal care.
4. ☒ **CHRONIC CONDITIONS REQUIRING TREATMENTS**
A chronic condition which:
 - (1) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
 - (2) Continues over an extended period of time (including recurring episodes of a single underlying condition);² and
 - (3) May cause episodic rather than continuing period of incapacity² (e.g. asthma, diabetes, epilepsy, etc.).
5. **PERMANENT/LONG-TERM CONDITIONS REQUIRING SUPERVISION**
A period of incapacity² which is permanent or long term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or terminal states of a disease.
6. **MULTIPLE TREATMENTS (Non-chronic Conditions)**
Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity² of more than three consecutive calendar days in the absence of medical intervention or treatment such as cancer (chemotherapy, radiation, etc., severe arthritis (physical therapy), kidney disease (dialysis)).

2. Describe the medical facts which support your certification, including a brief statement as to how the medical facts meet the criteria of one of these categories:

Insomnia, Sleep apnea, Acid Reflux, Anxiety disorder
is likely to cope, stress, tremor, poor concentration, back medication to cope

3. a. State the approximate date the condition commenced, and the probable duration of the condition (and also the probable duration of the patient's present incapacity² if different):

start to start of work 10/14/02 → approximately 4-6
work out

b. Will it be necessary for the employee to take work only intermittently or to work on a less than full schedule as a result of the condition (including for treatment described in item 4 below)?

Out completely
see Above

c. If the condition is a chronic condition (condition #4) or pregnancy, state whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity:

4. a. If additional treatments will be required for the condition, provide an estimate of the probable number of such treatments:

will see specialist for sleep apnea

If the patient will be absent from work or other daily activities because of treatment on an intermittent or part-time basis, also provide an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any:

EXHIBIT

9

Salem Family Practice
7 Stiles Rd. Salem NH 03079

4. If a regimen of continuing treatment by the patient is required under your supervision, provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment):

5. If a medical leave is required for the employee's absence from work because of the employee's own condition (including absences due to pregnancy or a chronic condition), is the employee unable to perform work of any kind? no work

6. If able to perform some work, is the employee unable to perform any one or more of the essential functions of the employee's job (the employee or the employer should supply you with information about the essential job functions)? no work see above If yes, please list the essential functions the employee is unable to perform:

c. If neither a. nor b. applies, is it necessary for the employee to be absent from work for treatment? yes

6. a. If leave is required to care for a family member of the employee with a serious health condition, does the patient require assistance for basic medical or personal needs or safety, or for transportation? no work see above

b. If no, would the employee's presence to provide psychological comfort be beneficial to the patient or assist in the patient's recovery?

c. If the patient will need care only intermittently or on a part-time basis, please indicate the probable duration of the need: Salem Family Practice, Salem NH 03079, 7 Stiles Rd.

x [Signature] 10/11/02
Signature of Health Care Provider Date

Type of Practice RAM. Practice

Address 7 Stiles Rd Salem NH. City, State, Zip Salem NH 03079 Phone (603) 858-4000

To be completed by the employee needing family leave to care for a family member

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule:

x [Signature] 10/11/02
Employee's Signature Date

Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking the FMLA leave.

2 "Incapacity" for purposes of FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment thereof, or recovery therefrom.

3 Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examination, eye examination, or dental examination.

4 A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

Employee Information

Family Medical Leave Re

Employee Name (Last, First, M.I.) PLEASE PRINT <u>PIZZUTO, PAUL J.</u>	Employee No. <u>272371</u>	Social Security No. <u>03215842</u>
Employee Address <u>59 Rollins St. Lawrence</u>	City <u>MA</u>	State <u>MA</u>
Name of Person who completed form (if not the Employee) <u>01841</u>		

Purpose of Leave

Type of leave requested: Check all that apply

☐ Paid vacation☐ Paid sick time☒ Unpaid family medical leave☐ Other type _____

Purpose of leave: Check all that apply

☐ For the birth of a child or to care for the newly-born child☐ To care for an immediate family member (spouse, child, or employee's parent) with a serious health condition☒ Because of the employee's serious health condition which makes the employee unable to perform the functions of the employee's job☐ Recreation or pleasure☐ Other reason: _____

If the leave involves the serious health condition of the employee or the immediate family member, does the employee request intermittent leave or a reduced work schedule?

☐ No☒ Yes - If yes, explain why intermittent leave or a reduced work schedule is necessary, and the schedule for treatment:

Anticipated Starting Date <u>10/14/02</u>	Anticipated Ending Date <u>1/1/03</u>	Today's Date <u>10/11/02</u>	Was the employer notified about the leave at an earlier date? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, give date of earlier notification
--	--	---------------------------------	---

Has 30 days advance notice been given?

☐ Yes☒ No - Give Explanation for delay in providing notice to employer:

Intention to return to work at Airborne (check one box)

☐ I will NOT be returning to work at Airborne.☒ I may be unable to return to work at Airborne at the end of my leave, but I desire to return to work at a later date if possible.☐ I intend to return to work at Airborne when my leave ends.

I certify that the above information is true and correct to the best of my knowledge. I understand that any intentional misrepresentation concerning the above facts can result in the termination of employment.

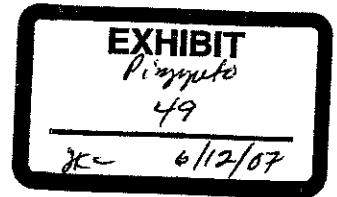
I have read and understand the Family Medical Leave Policy Outline (see reverse) and I agree to its terms and conditions.

X

Signature of Person who completed this form

Date

10/11/02

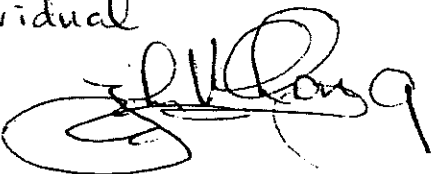
Salem, NH 03079
603-898-4000

To Whom It may Concern:

Mr. Paul Pizzuto is a patient well known to me. According to the history obtained from Mr. Pizzuto, he experienced months of emotional insults as a result of an injury he had at work. In spite of his injury he continued to work as long as he was able to the best of his ability. He is constantly under the fear of being terminated if he steps out line. However due to the advice of the specialist he took time out of work to receive treatment and needed rest to recover from his injury. Unfortunately his manager made some unbounded charges against Paul and made the situation worse by placing Paul in a state of confusion for several months. His job status unstable. During this period he suffered severe depression and developed many associated medically related illnesses.

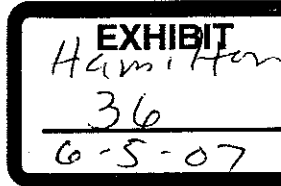
I saw Paul on 10/11/02 in a state of mental breakdown along with many other medical problems. Fortunately we were able help him through this with the help of several specialists and extensive diagnostic studies.

Please consider these facts and I can attest that Mr Pizzuto to be a hard working, honest individual

 4/24/03


To : Steve Crosskens
FR : Paul Pizzuto
RE : Workmans Comp, FM LA

10/21/02



Please see enclosed copies for
necessary leave and workmans Comp info
I also would like the form for
Airbornes weekly reimbursement for
workmans comp in order that I may
process for benefits thru Airborne.

Send form to
Paul Pizzuto
59 Rollins St
Lawrence Ma 01841

Thank You


MEMORY TRANSMISSION REPORT

TIME : OCT-21-2002 01:05PM
TEL NUMBER : +1-781-279-4619
NAME : AIRBORNE EXPRESS

FILE NUMBER : 106
DATE : OCT-21 01:04PM
TO : 12062818967
DOCUMENT PAGES : 003
START TIME : OCT-21 01:04PM
END TIME : OCT-21 01:05PM
SENT PAGES : 003
STATUS : OK

FILE NUMBER : 106

*** SUCCESSFUL TX NOTICE ***



3101 Western Avenue Seattle, WA 98111-0662

October 11, 2002

Paul J. Pizzuto
59 Rollins St.
Lawrence MA 01841

Please for additional information

Dear Mr. Pizzuto:

In order to properly assess your Family Medical Leave (FML) request, page two (2) of the Certificate of Health Care Provider Form needs to be completed.

Page one (1) requires that your attending health care provider complete the following:

Section 3.c: This section was left blank.

I have enclosed page (two) 2 of the Health Care Provider form. I have also enclosed the Family Medical Leave Act Policy Outline for you to read and sign and return along with the completed Medical Certification.

If you expect to be absent from work, arrangements should be made for Airborne Express Management to receive this documentation.

If you have any questions regarding this request, please feel free to contact me at (800) 426-4343 ext. 2289. please

Sincerely,

[Signature]
M. Jill Parker
Labor Relations

FAX # (206) 281-8967

Enclosures: FMLA Policy Outline
Certificate of Health Care Provider form
(original)
Certificate of Health Care Provider form
(page 2)

Cc: Steven Crossen



3101 Western Avenue Seattle, WA 98111-0662

October 11, 2002

Paul J. Pizzuto
59 Rollins St.
Lawrence MA 01841

*Please for
additional information*

Dear Mr. Pizzuto:

In order to properly assess your Family Medical Leave (FML) request, page two (2) of the Certificate of Health Care Provider Form needs to be completed.

Page one (1) requires that your attending health care provider complete the following:

Section 3.c: This section was left blank.

I have enclosed page (two) 2 of the Health Care Provider form. I have also enclosed the Family Medical Leave Act Policy Outline for you to read and sign and return along with the completed Medical Certification.

If you expect to be absent from work, arrangements should be made for Airborne Express Management to receive this documentation.

If you have any questions regarding this request, please feel free to contact me at (800)426-4343 ext. 2289.

Sincerely,

A handwritten signature in cursive script, appearing to read "M. Jill Parker".

M. Jill Parker
Labor Relations

FAX # (206) 281-8967

Enclosures: FMLA Policy Outline
Certificate of Health Care Provider form
(original)
Certificate of Health Care Provider form
(page 2)

Cc: Steven Crossken

-FAMILY MEDICAL LEAVE POLICY OUTLINE-
SEPTEMBER, 2002

The Family Medical Leave Act (FMLA) requires covered employers to provide up to twelve weeks of unpaid, job protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for Airborne Express for at least one (1) year, and for 1,250 hours over the previous twelve (12) months, and if there are at least fifty (50) employees within seventy-five (75) miles.

REASONS FOR TAKING LEAVE: Unpaid leave must be granted for any of the following reasons:

- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.

ADVANCE NOTICE AND MEDICAL CERTIFICATION: The employee may be required to provide advance leave notice and medical certification. Take of leave may be denied if requirements are not met.

- The employee ordinarily must provide thirty (30) days advance notice when the leave is "foreseeable."
- An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

JOB BENEFITS AND PROTECTION:

- For the duration of the FML, the employer must maintain the employee's health coverage under any "group health plan."
- Upon return from FML, employees must be restored to their original or equivalent positions with equivalent pay, benefits and other employment terms.
- The use of the FML cannot result in the loss of any employment benefits that accrued prior to the start of an employee's leave.

AIRBORNE'S POLICY

Under our policy, leaves of absence that qualify for family medical leave under state or federal law run at the same time as other types of leave, such as workers compensation leave, leave for a non-industrial injury or illness (including paid leave such as sick leave), leave for drug rehabilitation, leave as a reasonable accommodation for a qualified individual with a disability, including pregnancy and post-delivery recovery, and paid vacation used for a family-leave qualifying reason.

Leave that qualifies as family medical leave will be counted against the employee's annual 12-week family leave entitlement.

A FML may be requested by completing a FML Certification of Health Care Provider form and submitting it to Labor Relations. Airborne requires thirty (30) calendar days notice before the leave may commence unless the reason for the leave is not foreseeable. The Certification of Health Care Provider must be returned within fifteen (15) calendar days, or we may delay the commencement of your leave until the certification is submitted. If you fail to return the medical certification within fifteen (15) calendar days, all absences occurring during this period may be counted under the attendance policy.

Airborne uses the "rolling year" method for FML eligibility calculations. A rolling 12-month period is measured backward in time from the date an employee uses any FMLA leave.

When on FML, employees may elect or Airborne will require the use of accrued benefits based on the following leaves:

1. birth/adoption/foster child: may elect to use vacation and sick leave hours; will be required to use personal days.
2. family illness of parent or spouse: will be required to use sick leave, vacation and/or personal days.
3. serious health condition of self/child: will be required to use sick leave, vacation, and personal days.

The length of any approved unpaid FML shall be reduced by the number of paid days elected or required. Additional conditions and/or limitations may also apply based on the terms of your collective bargaining agreement. For additional information contact Labor Relations.

ACKNOWLEDGEMENT STATEMENT

I acknowledge receipt of the Family Medical Leave Act (FMLA) Policy Outline and Airborne's Policy on Family Medical Leave.

I acknowledge that I have read and understand the Family Medical Leave Act (FMLA) Policy Outline and Airborne's Policy on Family Medical Leave.

If I have any further questions regarding my FML I am to contact the Labor Relations department in the G.O.

X

Employee's Signature

Date: _____

10/12/02

TO BE SUBMITTED ALONG WITH THE
CERTIFICATE OF HEALTH
CARE PROVIDER FORM

Employee Information

Family Medical Leave Rec

Employee Name (Last, First, M.I.) PLEASE PRINT PIZZUTO, PAUL J	Employee No. 272371	Social Security No. 013121581428
Employee Address 59 Rollins St. Lawrence MA 01841	State MA Zip 01841	
Name of Person who completed form (if not the Employee)		

Purpose of Leave

Type of leave requested: Check all that apply

- ☐ Paid vacation
 ☐ Paid sick time
 ☒ Unpaid family medical leave
 ☐ Other type _____

Purpose of leave: Check all that apply

- ☐ For the birth of a child or to care for the newly-born child
☐ To care for an immediate family member (spouse, child, or employee's parent) with a serious health condition
☒ Because of the employee's serious health condition which makes the employee unable to perform the functions of the employee's job
☐ Recreation or pleasure
☐ Other reason: _____

If the leave involves the serious health condition of the employee or the immediate family member, does the employee request intermittent leave or a reduced work schedule?

- ☐ No
 ☒ Yes - If yes, explain why intermittent leave or a reduced work schedule is necessary, and the schedule for treatment:

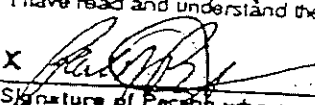
Anticipated Starting Date 10/14/02	Anticipated Ending Date 1/1/02	Today's Date 10/11/02	Was the employer notified about the leave at an earlier date? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, give date of earlier notification
Has 30 days advance notice been given? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No - Give Explanation for delay in providing notice to employer:			

Intention to return to work at Airborne (check one box)

- ☐ I will NOT be returning to work at Airborne.
☒ I may be unable to return to work at Airborne at the end of my leave, but I desire to return to work at a later date if possible.
☐ I intend to return to work at Airborne when my leave ends.

I certify that the above information is true and correct to the best of my knowledge. I understand that any intentional misrepresentation concerning the above facts can result in the termination of employment.

I have read and understand the Family Medical Leave Policy Outline (see reverse) and I agree to its terms and conditions.

X 
 Signature of Person who completed this form Date **10/11/02**

OCT-11-2002 15:37
 PLEASE PRINT
 Employee Name (Last, First, M.I.) **PAUL** ID# **572 371** 978 664 3897 F.02/02
 Employee Address **59 Rollins St. Lawrence** City **MA** State **MA** Zip **01841**
 Patient's Name (if different from employee)
 1. The information below describes what is meant by a "serious health condition" under the Family Medical Leave Act. Does the patient's condition qualify under any of these categories described? If so, please check the applicable category.
 1. ☐ 2. ☒ 3. ☐ 4. ☐ 5. ☐ 6. ☐ None ☐
 A "Serious Health Condition" means an illness, injury, impairment or physical or mental condition that involves one of the following:
 1. ☒ **HOSPITAL CARE** Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.
 2. ☒ **ABSENCE PLUS TREATMENT**
 (a) A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that involves:
 (1) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
 (2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
 3. ☒ **PREGNANCY** Any period of incapacity due to pregnancy, or for prenatal care.
 4. ☒ **CHRONIC CONDITIONS REQUIRING TREATMENTS**
 A chronic condition which:
 (1) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
 (2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 (3) May cause episodic rather than continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
 5. **PERMANENT/LONG-TERM CONDITIONS REQUIRING SUPERVISION**
 A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or terminal stages of a disease.
 6. **MULTIPLE TREATMENTS (Non-chronic Conditions)**
 Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment such as cancer (chemotherapy, radiation, etc., severe arthritis (physical therapy), kidney disease (dialysis)).
 2. Describe the medical facts which support your certification, including a brief statement as to how the medical facts meet the criteria of one of these categories: **Insomnia, Sleep apnea, Acid Reflux, Anxiety disorder, is likely to cause stress, tremor, poor concentration, lack medication compliance**
 3. a. State the approximate date the condition commenced, and the probable duration of the condition (and also the probable duration of the patient's present incapacity if different): **start to end of work 10/14/02 → approximately 4-6 weeks out**
 b. Will it be necessary for the employee to take work only intermittently or to work on a less than full schedule as a result of the condition (including for treatment described in item 4 below)? **out completely see Above**
 c. If the condition is a chronic condition (condition 6c) or pregnancy, state whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity:
 4. a. If additional treatments will be required for the condition, provide an estimate of the probable number of such treatments: **will see specialist for sleep apnea**
 If the patient will be absent from work or other daily activities because of treatment on an intermittent or part-time basis, also provide an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any:
 Salem Family Practice
 7 Stiles Rd. Salem NH 03079

...the treatment... new assist, please state the...

...a regimen of continuing treatment by the patient is required under your supervision; provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment):

...continued treatment, and follow-up...

5. a. If a medical leave is required for the employee's absence from work because of the employee's own condition (including absences due to pregnancy or a chronic condition), is the employee unable to perform work of any kind?

NO WORK

b. If able to perform some work, is the employee unable to perform any one or more of the essential functions of the employee's job (the employee or the employer should supply you with information about the essential job functions)? If yes, please list the essential functions the employee is unable to perform:

NO WORK see Above

c. If neither a. nor b. applies, is it necessary for the employee to be absent from work for treatment? YES

6. a. If leave is required to care for a family member of the employee with a serious health condition, does the patient require assistance for basic medical or personal needs or safety, or for transportation?

NO WORK see Above

b. If no, would the employee's presence to provide psychological comfort be beneficial to the patient or assist in the patient's recovery?

Salem Family Practice
7 Stiles Rd. Salem NH 03079

c. If the patient will need care only intermittently or on a part-time basis, please indicate the probable duration of the need:

7 Stiles Rd. Salem NH 03079

x [Signature] 10/11/02
Signature of Health Care Provider Date

Type of Practice
PAM. Practitioner

Address City, State, Zip Phone
7 Stiles Rd. Salem NH. (603) 888-6202

To be completed by the employee needing family leave to care for a family member

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule:

x [Signature] 10/11/02
Employee's Signature Date

¹ Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking the FMLA leave.

² "Incapacity" for purposes of FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment thereof, or recovery therefrom.

³ Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examination, eye examination, or dental examination.

⁴ A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

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<p>Pages: 1 - 50 Exhibits: 40 - 41</p> <p>UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS C.A. NO. 04-12492GAO</p> <p>PAUL PIZZUTO,) Plaintiff,) v.) AIRBORNE EXPRESS, INC.,) et al.,) Defendants.)</p> <p>DEPOSITION OF ARTHUR J. LEVERIS, called as a Witness by Counsel for the Plaintiff, pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before Ann M. Lavoie, Court Reporter and Notary Public in and for the Commonwealth of Massachusetts, taken at Law Office of Richard A. Mulhearn, 41 Elm Street, Worcester, Massachusetts 01609, on Tuesday, June 5, 2007, commencing at 1:35 p.m.</p> <p>***** FLYNN REPORTING ASSOCIATES Professional Court Reporters One Exchange Place Worcester, Massachusetts 01608 (508) 755-1303 * (617) 536-2727 TOLL FREE: (888) 244-8858 FAX: (508) 752-4611 *****</p>	<p>1 INDEX</p> <p>2</p> <p>3 Deposition of: Pages</p> <p>4 Arthur J. Leveris</p> <p>5 By Mr. Mulhearn 4</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 EXHIBITS</p> <p>11 No. Description Page</p> <p>12</p> <p>13 40 Arthur J. Leveris, Jr. Resume 4</p> <p>14</p> <p>15 41 Hand-Drawn Rough-Sketch Diagram 26</p> <p>16</p> <p>17 ** EXHIBITS RETAINED BY COUNSEL **</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	
Page 2		
<p>1 APPEARANCES</p> <p>2</p> <p>3</p> <p>4 LAW OFFICES OF RICHARD A. MULHEARN</p> <p>5 By: Richard A. Mulhearn, Esq</p> <p>6 41 Elm Street</p> <p>7 Worcester, Massachusetts 01609</p> <p>8 508-753-9999</p> <p>9</p> <p>10 Appearing for the Plaintiff</p> <p>11</p> <p>12 SULLIVAN WEINSTEIN & MCQUAY, P.C.</p> <p>13 By: C. Max Perlman, Esq.</p> <p>14 Two Park Plaza</p> <p>15 Boston, Massachusetts 02116</p> <p>16 617-348-4300</p> <p>17</p> <p>18 Appearing for the Defendants</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>Exhibit 12</p>	Page 4	
	<p>1 STIPULATIONS</p> <p>2</p> <p>3 It is stipulated by and between</p> <p>4 counsel for the respective parties that the</p> <p>5 deposition transcript will be read and signed by the</p> <p>6 deponent within thirty (30) days of receipt of the</p> <p>7 transcript under the pains and penalties of perjury.</p> <p>8 The filing and notary is hereby waived.</p> <p>9 It is further agreed that any</p> <p>10 objection, except as to the form of the question,</p> <p>11 and motions to strike are reserved until the time of</p> <p>12 trial.</p> <p>13 (Exhibit No. 40, Arthur J.</p> <p>14 Leveris, Resume, marked for identification.)</p> <p>15</p> <p>16 Arthur J. Leveris, having been</p> <p>17 satisfactorily identified and duly sworn by the</p> <p>18 Notary Public, was examined and testified as</p> <p>19 follows:</p> <p>20</p> <p>21 EXAMINATION</p> <p>22 BY MR. MULHEARN:</p> <p>23 Q. State your full name for the record,</p> <p>24 please?</p>	

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<p>1 manager, the station manager.</p> <p>2 So when I first arrived it would have been</p> <p>3 Mike Trudeau and then Steve Crossken and then, while</p> <p>4 I was the station manager, I reported directly to</p> <p>5 Joe Hamilton.</p> <p>6 Q. Previous to you Trudeau had been the</p> <p>7 station manager?</p> <p>8 A. Correct.</p> <p>9 Q. Did you jump over him in the chain?</p> <p>10 A. Yes.</p> <p>11 Q. Afterwards he now reported to you?</p> <p>12 A. Correct.</p> <p>13 Q. In the course of those two years, 2002,</p> <p>14 2003 -- those are the years I'll be asking you about</p> <p>15 here -- were you familiar with Paul Pizzuto?</p> <p>16 A. Yes. Absolutely.</p> <p>17 I don't know -- I know he was out on</p> <p>18 worker's comp when I first got there, I believe, so</p> <p>19 I'm not sure when I met him.</p> <p>20 But, yes, I know exactly who Paul Pizzuto</p> <p>21 is.</p> <p>22 Q. Did you come to Stoneham in the middle of</p> <p>23 the year, middle, end?</p> <p>24 A. Well, I was station manager at the World</p>	<p>1 this kind of a log?</p> <p>2 A. Yes.</p> <p>3 Q. Does looking at it give you some idea as to</p> <p>4 your first interaction with Mr. Pizzuto?</p> <p>5 A. The only thing that stands out is --</p> <p>6 Looking at this do I know when my first interaction</p> <p>7 with Mr. Pizzuto is?</p> <p>8 Q. Yes.</p> <p>9 A. No.</p> <p>10 Q. Do you know if you were there at Stoneham</p> <p>11 when he was discharged, in 2002, for sleeping on the</p> <p>12 premises?</p> <p>13 MR. PERLMAN: Objection. You can</p> <p>14 answer.</p> <p>15 A. I don't think so. I'm not sure if I was.</p> <p>16 Q. Do you remember learning that at some point</p> <p>17 that he had been discharged by Crossken for sleeping</p> <p>18 while on light duty, while on the premises, that was</p> <p>19 grieved and was reduced to a suspension?</p> <p>20 MR. PERLMAN: Objection. You can</p> <p>21 answer.</p> <p>22 A. Yes.</p> <p>23 Q. That may have been before you arrived?</p> <p>24 A. Correct. I'm not 100 percent sure.</p>
Page 10	Page 12
<p>1 Trade Center facility during 911.</p> <p>2 I left there after about a month going back</p> <p>3 into the city, went to New Jersey for about six or</p> <p>4 seven months after that.</p> <p>5 So 2002 -- probably around June or July of</p> <p>6 2002 I was in the north shore facility.</p> <p>7 Q. As of mid-year 2002?</p> <p>8 A. Yeah.</p> <p>9 Q. He was off on some sort of comp injury for</p> <p>10 a calf injury; is that so?</p> <p>11 A. No. I don't recall that.</p> <p>12 Q. When you came into the facility he was out</p> <p>13 on comp; is that right?</p> <p>14 A. I think so. I'm not 100 percent sure.</p> <p>15 Q. Is it fair to say that --</p> <p>16 A. Do we know what dates he was out?</p> <p>17 Q. Let's jump into Exhibit 2.</p> <p>18 MR. PERLMAN: The original for</p> <p>19 Exhibit 1 seems to be missing.</p> <p>20 Q. (By Mr. Mulhearn) I've shown you Exhibit 2.</p> <p>21 What it is is a Disciplinary Action Log that's been</p> <p>22 identified previously. This has to do with Paul</p> <p>23 Pizzuto.</p> <p>24 Have you seen something like this before,</p>	<p>1 Q. If you look at this exhibit, there's some</p> <p>2 other disciplines being given in August and</p> <p>3 September 2002.</p> <p>4 Did you play any part in any of those</p> <p>5 disciplines, as far as you remember?</p> <p>6 A. I would have to say, yes.</p> <p>7 Q. At some point, approximately October 2002,</p> <p>8 is it fair to say that he went off on a worker's</p> <p>9 compensation leave or at least a medical leave?</p> <p>10 MR. PERLMAN: Objection.</p> <p>11 A. You know, there's a bunch of -- there's 130</p> <p>12 employees there. Each employee has things that --</p> <p>13 their family medical leave.</p> <p>14 It's hard to recall exactly if -- I can't</p> <p>15 answer 100 percent sure that I recall he was out on</p> <p>16 medical leave.</p> <p>17 Q. Let me show you -- can you get Exhibit No.</p> <p>18 36 out in front of you?</p> <p>19 Have you looked at it already, generally?</p> <p>20 A. It's right here. I've just looked at it.</p> <p>21 Q. Is it fair to say that by October 21, 2002</p> <p>22 you were directly reporting to Steve Crossken?</p> <p>23 A. No. I didn't report -- Joe Hamilton</p> <p>24 promoted me, so it wasn't until after Steve left</p>

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<p>1 that I was station manager.</p> <p>2 Q. The documentation that's provided as part</p> <p>3 of Exhibit 36, this FMLA information, was that</p> <p>4 something that you ever saw?</p> <p>5 A. Yes.</p> <p>6 Q. When did you see that, approximately?</p> <p>7 A. I see FMLA forms every single day as a</p> <p>8 manager.</p> <p>9 Do I specifically recall this one?</p> <p>10 No.</p> <p>11 Q. Part of the process at least was that the</p> <p>12 FMLA paperwork would go through the manager;</p> <p>13 correct?</p> <p>14 A. At one point -- at some point we didn't</p> <p>15 have anything to do with it. It went directly to</p> <p>16 the general office.</p> <p>17 We can't approve or deny FMLA. It's a</p> <p>18 federal act. We have nothing to do with it.</p> <p>19 Were we aware of folks on FMLA?</p> <p>20 Sure.</p> <p>21 Q. This kind of paperwork might be something</p> <p>22 that would cross your desk as a manager?</p> <p>23 MR. PERLMAN: Objection.</p> <p>24 A. No. It would have crossed -- it wouldn't</p>	<p>1 and so forth?</p> <p>2 A. Yes.</p> <p>3 Q. Do you remember being aware at any time</p> <p>4 before he was let go, in July of 2003, that he had</p> <p>5 been off on a leave for some mental condition, like</p> <p>6 stress or something like that, earlier that year?</p> <p>7 MR. PERLMAN: Objection. You can</p> <p>8 answer, if you can.</p> <p>9 A. Do I recall him being out?</p> <p>10 Can you repeat that?</p> <p>11 Q. At any time before he was fired, in July</p> <p>12 2003, were you aware from any source that he had</p> <p>13 been out previously, like earlier that year, on a</p> <p>14 mental health stress leave?</p> <p>15 MR. PERLMAN: Objection.</p> <p>16 A. When an employee returns to work, you</p> <p>17 notice -- it's a new employee that you haven't met</p> <p>18 before, so you knew they were out for a reason.</p> <p>19 Do I know specifically why he was out?</p> <p>20 No.</p> <p>21 Q. Did you have any idea that he had been</p> <p>22 treating for mental health issues?</p> <p>23 A. No. Other than the statements he would</p> <p>24 say, i.e., I'm on my medication, just make remarks</p>
Page 14	Page 16
<p>1 have crossed my desk. It would have crossed Steve's</p> <p>2 desk, if it crossed at all.</p> <p>3 Q. Does this refresh your recollection at all</p> <p>4 about Pizzuto going off on a family medical leave in</p> <p>5 October of 2002?</p> <p>6 A. It's right in front of me but not really.</p> <p>7 Q. Would it refresh your recollection at all</p> <p>8 if I was to suggest to you he was off on a family</p> <p>9 leave from October 2002 until the end of February</p> <p>10 2003?</p> <p>11 Does that sound familiar?</p> <p>12 MR. PERLMAN: Objection. Isn't</p> <p>13 this a matter of record. I don't know if Art's</p> <p>14 testimony on this is -- you can do what you want.</p> <p>15 I'm not sure he's going to help on this.</p> <p>16 MR. MULHEARN: It may not be an</p> <p>17 earth shattering revelation.</p> <p>18 MR. PERLMAN: It doesn't sound</p> <p>19 like he has any prior knowledge on the topic.</p> <p>20 A. I don't.</p> <p>21 Q. Do you recall that Mr. Pizzuto was</p> <p>22 terminated in July of 2003?</p> <p>23 A. Yes.</p> <p>24 Q. Having to do with threats and his conduct</p>	<p>1 like, I'm nuts. I'm taking my meds like I'm</p> <p>2 supposed to. That's the only thing that I knew from</p> <p>3 his own mouth.</p> <p>4 Q. He said those things to you?</p> <p>5 A. He was saying them out loud. Sure.</p> <p>6 Q. Do you remember the circumstances of that</p> <p>7 interaction for him to say that?</p> <p>8 A. No.</p> <p>9 Q. What was your opinion of him during that</p> <p>10 time?</p> <p>11 MR. PERLMAN: Objection.</p> <p>12 A. My opinion?</p> <p>13 Does my opinion matter?</p> <p>14 Q. It does here.</p> <p>15 MR. PERLMAN: That's debatable. I</p> <p>16 object because the question is not clear.</p> <p>17 A. My opinion is he was -- he would make odd</p> <p>18 remarks. He would say, You guys are going to get</p> <p>19 yours. You're going to get it.</p> <p>20 So my opinion is he had some stress issues</p> <p>21 in his life.</p> <p>22 Q. Would you agree that he appeared not to be</p> <p>23 right mentally?</p> <p>24 MR. PERLMAN: Objection.</p>

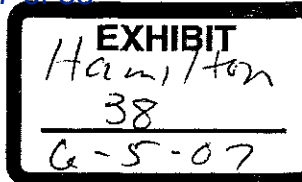
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<p>1 dock.</p> <p>2 They would drive up in the parking lot and</p> <p>3 punch in because there's no parking spaces available</p> <p>4 and then go find a parking space down the street.</p> <p>5 Q. This ramp; I haven't seen it. I don't</p> <p>6 know.</p> <p>7 How long is it approximately?</p> <p>8 A. 30 yards, 25 yards.</p> <p>9 Q. There's a parking area at the bottom where</p> <p>10 people --</p> <p>11 A. There's a parking lot there. This entire</p> <p>12 area out here, down to here, is all parking.</p> <p>13 There's a street right up here where people</p> <p>14 park on the side of the street.</p> <p>15 Q. Your experience is that employees, if they</p> <p>16 were going to punch in like that, would park their</p> <p>17 car down by the lot area and then walk up the ramp</p> <p>18 and punch in?</p> <p>19 A. They'd park near the parking lot, and then</p> <p>20 they'd walk up, punch in, get in their car and find</p> <p>21 a spot.</p> <p>22 Q. They wouldn't drive their car up the ramp?</p> <p>23 A. No.</p> <p>24 Q. In this particular case, what did Mr.</p>	<p>1 Q. (By Mr. Mulhearn) I've just marked as</p> <p>2 Exhibit 41, a rough sketch that you've done.</p> <p>3 You say these other supervisors, Carter,</p> <p>4 Trudeau, and Sweatt, were in the vicinity when this</p> <p>5 happened?</p> <p>6 A. Correct.</p> <p>7 Q. Did any of them have the same reaction that</p> <p>8 you did?</p> <p>9 A. Absolutely.</p> <p>10 Q. Collectively, all of you?</p> <p>11 MR. PERLMAN: Objection.</p> <p>12 A. Collectively?</p> <p>13 I don't know about collectively.</p> <p>14 There were -- as a manager, they sent</p> <p>15 emails in of what they witnessed that day.</p> <p>16 Q. Was anyone as close to Pizzuto's car as you</p> <p>17 were?</p> <p>18 A. I don't know. I don't know.</p> <p>19 Q. The next question is: How close do you</p> <p>20 think was the closest he ever came to you?</p> <p>21 A. When he drove up onto the dock?</p> <p>22 Q. Yes.</p> <p>23 A. Probably 10, 15 feet.</p> <p>24 Q. Did you actually physically react -- I</p>
Page 26	Page 28
<p>1 Pizzuto do after he drove up the ramp?</p> <p>2 A. What did he do?</p> <p>3 Q. What did he do?</p> <p>4 A. He drove up onto the dock. That's where</p> <p>5 things -- you know, my first thought was to get out</p> <p>6 of there for my own safety to be honest with you.</p> <p>7 I know he punched in. Then he sped off in</p> <p>8 reverse.</p> <p>9 Q. Did he peel out in reverse or just back up</p> <p>10 quickly?</p> <p>11 A. I want to say he peeled out, but that's</p> <p>12 not -- I mean, I'm pretty sure he did. I'm not 100</p> <p>13 percent.</p> <p>14 Q. Did you stay in that location from the time</p> <p>15 that he pulled in or pulled up, got out of the car,</p> <p>16 punched in, came back?</p> <p>17 Did you stay in the same place?</p> <p>18 A. Probably not. I was always moving around.</p> <p>19 Q. Was there anyone else there with you?</p> <p>20 A. I believe Greg Sweatt was right there. Tim</p> <p>21 Carter was there.</p> <p>22 I'm not sure if Mike Trudeau was.</p> <p>23 (Exhibit No. 41, Hand-Drawn</p> <p>24 Rough-Sketch Diagram, marked for identification.)</p>	<p>1 assume you didn't dive for cover, but did you walk</p> <p>2 or move away from the area?</p> <p>3 A. I was in a position where there were</p> <p>4 trailers there. So my thought was, What vehicle can</p> <p>5 I jump in and get the heck out of there, because I</p> <p>6 was in a bad location to try to get out of there.</p> <p>7 I didn't know if I needed to -- I didn't</p> <p>8 know what to do.</p> <p>9 Q. You were looking for an escape route,</p> <p>10 basically?</p> <p>11 A. Absolutely.</p> <p>12 Q. Did you see any of the other supervisors</p> <p>13 act likewise?</p> <p>14 A. Don't recall.</p> <p>15 Q. You wrote up a statement about this event;</p> <p>16 correct?</p> <p>17 A. Yeah. It was common practice if there was</p> <p>18 any type of thing out of the ordinary that we would</p> <p>19 write statements.</p> <p>20 MR. PERLMAN: He'll show you what</p> <p>21 to look at.</p> <p>22 Q. (By Mr. Mulhearn) Can you tell us what</p> <p>23 No. 4 is, what this document is?</p> <p>24 MR. PERLMAN: Again, just for the</p>

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<p>1 ridiculous statements to you?</p> <p>2 A. Absolutely.</p> <p>3 Q. Mixed in there you got things like, Have</p> <p>4 you seen someone die?</p> <p>5 Is that fair to say that there's a mix of</p> <p>6 things that are being uttered?</p> <p>7 MR. PERLMAN: Objection.</p> <p>8 A. Sure.</p> <p>9 Q. Some more alarming than others; would you</p> <p>10 agree?</p> <p>11 A. I would say they're all pretty alarming.</p> <p>12 Q. The idea of the "feds are on it now."</p> <p>13 A. Uh-huh.</p> <p>14 Q. Does that seem ridiculous babbling?</p> <p>15 MR. PERLMAN: Objection.</p> <p>16 A. No.</p> <p>17 When I say, no, "Feds are on it now," I</p> <p>18 mean this history that, you know, the feds are in</p> <p>19 the union environment isn't – is commonly used.</p> <p>20 I think that President Cashman was involved</p> <p>21 in a federal trial and ended up doing a couple of</p> <p>22 years for racketeering.</p> <p>23 The comments don't alarm me. I think that</p> <p>24 – when I say, The comments don't alarm me, they are</p>	<p>1 wasn't right.</p> <p>2 I don't know – there wasn't a game plan,</p> <p>3 per se.</p> <p>4 Q. We use that expression. A decision?</p> <p>5 A. We were involved with labor. We were</p> <p>6 involved with the Local 25 chief steward. We were</p> <p>7 trying to get him some help.</p> <p>8 Q. Was it Pizzuto's response to that</p> <p>9 suggestion of him getting help, his response to</p> <p>10 that, something that led him to be let go?</p> <p>11 MR. PERLMAN: Objection.</p> <p>12 A. No.</p> <p>13 Q. In your email, fourth paragraph down, it</p> <p>14 says that Paul has stated he was going on FML due to</p> <p>15 stress and anxiety related to the disciplinary</p> <p>16 actions he received.</p> <p>17 Do you see that?</p> <p>18 A. Paul also stated he was going on FML due to</p> <p>19 stress and anxiety related to disciplinary actions</p> <p>20 he received.</p> <p>21 Okay.</p> <p>22 Q. Is that what he said; that he was going on</p> <p>23 FML?</p> <p>24 A. I think – was it after we issued him the</p>
Page 42	Page 44
<p>1 alarming but "the feds are on it now," no, that</p> <p>2 doesn't seem out of the ordinary.</p> <p>3 Q. We got video?</p> <p>4 A. That's just – that's crazy.</p> <p>5 Q. Can you look at Exhibit 31, please?</p> <p>6 A. Okay.</p> <p>7 Q. Is this an email that you directed to Joe</p> <p>8 Hamilton?</p> <p>9 A. Yes.</p> <p>10 Q. Is it accurate as to what it describes?</p> <p>11 A. Yes.</p> <p>12 Q. Is it fair to say that the game plan, if</p> <p>13 you will, for Mr. Pizzuto at this time, which time</p> <p>14 being July 24, day before he was let go, and July</p> <p>15 25, the day he was, was basically to get him to sort</p> <p>16 of self-refer or go through and get some sort of</p> <p>17 professional help for his obvious problems in lieu</p> <p>18 of being let go?</p> <p>19 MR. PERLMAN: Objection.</p> <p>20 Q. (By Mr. Mulhearn) Is that fair to say?</p> <p>21 A. Yeah, I think that's what Joe was pushing</p> <p>22 for.</p> <p>23 Ultimately, we were responsible for the</p> <p>24 safety of our entire workforce. Something just</p>	<p>1 termination letter, which would mean he could file</p> <p>2 for it? But he was terminated.</p> <p>3 Q. According to the way it's written here by</p> <p>4 you, this is after, I guess, the termination letter.</p> <p>5 A. Well, I mean, I said, Paul also stated, so</p> <p>6 I don't know exactly when he said that.</p> <p>7 Was it before or after? I would think</p> <p>8 after, but I'm not 100 percent sure.</p> <p>9 Q. Do you want to take a little time to answer</p> <p>10 that?</p> <p>11 A. Well, my recollection is that during this</p> <p>12 whole time he was uneasy. He was not cooperating.</p> <p>13 He was on the telephone stating he was going to win</p> <p>14 the big dance.</p> <p>15 So when exactly did he say he was going on</p> <p>16 FML? It was probably during the course of when we</p> <p>17 were issuing the termination.</p> <p>18 I mean, I can't tell you 100 percent what</p> <p>19 he said.</p> <p>20 Q. FML; is that Family Medical Leave?</p> <p>21 A. Yes, sir.</p> <p>22 Q. It was clear to all of you at the time that</p> <p>23 you felt that Paul needed help.</p> <p>24 MR. PERLMAN: Objection.</p>

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<p>1 A. It was obvious that something wasn't right.</p> <p>2 Q. Actually, I was quoting the letter.</p> <p>3 At the bottom of the page you said, We do</p> <p>4 believe Paul needs help. And you thought that was</p> <p>5 an important statement to add.</p> <p>6 A. During the meeting -- I think what I meant</p> <p>7 here was we're not doctors. That's important, I</p> <p>8 think, because we're not doctors. Okay.</p> <p>9 But when someone is acting differently, not</p> <p>10 normal, then, yes. I think we were trying to be</p> <p>11 helpful, to help out Mr. Pizzuto by offering him</p> <p>12 help.</p> <p>13 Q. Help was not firing him. The help was</p> <p>14 actually letting --</p> <p>15 A. The help was working with Local 25, the</p> <p>16 chief steward, to get him something.</p> <p>17 Q. Do you know whether there was an</p> <p>18 alternative?</p> <p>19 Let's say the options that were looked at</p> <p>20 at the time, at the end, were either termination for</p> <p>21 what's gone down or, short of that, him seeking some</p> <p>22 sort of leave and going off on disability and</p> <p>23 getting some medical attention, say those were the</p> <p>24 two things on the table, do you know if there could</p>	<p>1 Q. That may be true. They may not want to</p> <p>2 tell the truth, for example. Who knows?</p> <p>3 But do you remember any people that</p> <p>4 expressed to you a concern about their safety</p> <p>5 because of him?</p> <p>6 A. Any drivers?</p> <p>7 Q. Yes.</p> <p>8 A. Specific names?</p> <p>9 MR. PERLMAN: Can I meet with the</p> <p>10 witness just for a second?</p> <p>11 MR. MULHEARN: Sure.</p> <p>12 (Brief recess was taken.)</p> <p>13 Q. (By Mr. Mulhearn) Can you remember the</p> <p>14 names of any employees, other than supervisors, that</p> <p>15 complained about their fear of safety due to</p> <p>16 Pizzuto?</p> <p>17 A. There were numerous. What period of time</p> <p>18 is a different story.</p> <p>19 I know Jim Assetta.</p> <p>20 Q. He was someone that --</p> <p>21 A. He was on the same belt relatively -- a few</p> <p>22 vehicles down from Mr. Pizzuto.</p> <p>23 Q. Was he a driver?</p> <p>24 A. Yes.</p>
Page 46	Page 48
<p>1 have been a third thing on the table, as far as the</p> <p>2 company putting him out on involuntary medical</p> <p>3 leave?</p> <p>4 MR. PERLMAN: Objection.</p> <p>5 A. Do I know if there was?</p> <p>6 Q. At the time.</p> <p>7 A. No. No.</p> <p>8 I mean, his actions, specifically driving</p> <p>9 up onto the dock in a reckless manner, was a result</p> <p>10 of him being terminated.</p> <p>11 I mean, you know, it wasn't just the</p> <p>12 management that was afraid of him. The other</p> <p>13 employees were afraid, his peers were afraid of him.</p> <p>14 So we have a duty to make sure that the</p> <p>15 building is safe and secure for the workforce.</p> <p>16 Q. Do you know which employees -- I've seen</p> <p>17 the managers' information.</p> <p>18 Can you remember any employees that</p> <p>19 expressed concern about their safety because of him?</p> <p>20 A. Specifically, no, I don't.</p> <p>21 Their testimony wouldn't be the same. They</p> <p>22 have a contract that, We will not tell on our</p> <p>23 brothers or sisters.</p> <p>24 That's the environment we're dealing with.</p>	<p>1 Q. Did he complain to you about fear of</p> <p>2 safety?</p> <p>3 A. Yes.</p> <p>4 Q. Was it right around this time that we're</p> <p>5 discussing; July of 2003?</p> <p>6 A. I'm not sure exactly. It was his</p> <p>7 actions -- Mr. Pizzuto's actions in the building.</p> <p>8 That's the reason these employees were afraid.</p> <p>9 Q. Any specific action that you can relate to</p> <p>10 Mr. Assetta?</p> <p>11 A. Not specific. No.</p> <p>12 I don't know if it was the shirt incident</p> <p>13 or -- where he didn't have his shirt on, perhaps.</p> <p>14 It could have been the time where he</p> <p>15 wouldn't leave the building until we scanned all the</p> <p>16 pieces of freight in his truck.</p> <p>17 Q. Any other names of people that shared</p> <p>18 concerns about their safety?</p> <p>19 A. I think Gerry Halloran, the steward.</p> <p>20 Q. Did he express to you that he was concerned</p> <p>21 about his own personal safety?</p> <p>22 A. I don't know in that particular way.</p> <p>23 But I think it was discussed that something</p> <p>24 wasn't right.</p>



3101 Western Avenue, Seattle, WA 98111-0662 www.airborne.com



TO: Paul Pizzuto - 272371
 FR: M. Jill Parker, Labor Relations

DATE: October 28, 2002

RE: FAMILY MEDICAL LEAVE CONFIRMATION NOTICE

You notified us of your need to take family/medical leave due to:

- ☐ the birth of a child, or the placement of a child for adoption or foster care; or
☒ a serious health condition that you need care for; or
☐ a serious health condition affecting your ☐ spouse, ☐ child, ☐ parent

This leave will be counted against both your annual Federal FMLA leave entitlement and your state leave law. Except as explained below, you have a right under the FMLA for up to 12 weeks of unpaid leave continuation of your health benefits under the same conditions as if you continued to work, and you must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from leave. If you do not return to work following FMLA leave for a reason other than: (1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; or (2) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave. This letter is to inform you that:

1. — LEAVE DESIGNATION:

You are ☒ **ELIGIBLE** ☐ **NOT eligible** for leave under the FMLA.

2. STARTING DATE: October 14, 2002 (4-6 weeks, inclusive)

Thirty (30) days advance notice [☐was] [☒was not] given.

If thirty (30) days was not given, then your leave [☐ will] [☒ will not] be postponed.

3. SUBSTITUTION OF PAID LEAVE: You may elect to substitute accrued paid leave for unpaid FMLA leave. If you have any accrued paid leave available, then we will require you to substitute paid leave for unpaid FMLA leave. This paid leave will count against your annual FMLA entitlement.

☒ Paid vacation leave: per Airborne's Policy

☒ Paid sick leave: per Airborne's Policy

☒ Other paid leave: Personal and floaters per Airborne's Policy

4. INTERMITTENT LEAVE/REDUCED WORK SCHEDULE

Intermittent [☐is] [☒is not] approved. Intermittent leave is only authorized when it is deemed to be medically necessary [note: intermittent leave may not be used for birth of a child]. Based on the medical certification supplied by the attending doctor, your leave is limited for the medical condition set forth therein. Please note. all

attempt to schedule their leave so as not to disrupt the employer's operations. Also, employee must discuss with their immediate supervisor the anticipated leave schedule and notify them within 2 days of any change in said schedule. Failure to comply with this notice requirement may subject the employee to the attendance policy as set forth in the collective bargaining agreement.

5. **MEDICAL CERTIFICATION/RECERTIFICATION**

You [☐ will] [☐ will not] be required to or [☒ have already] furnish(ed) a medical certification of a serious health condition. If required, you must furnish certification within 15 calendar days after you are notified of this requirement, or we may delay the commencement of your leave until the certification is submitted. If you fail to return the medical certification within 15 days, all absences occurring during this period may be counted under the attendance policy. You may also be required to furnish re-certification relating to a serious health condition, if you are on intermittent FMLA. With this in mind, remember that compliance with all work rules for notifying your supervisor of absences must be followed. Failure to do so may be just cause for disciplinary action as set forth in your contract. You are further required to discuss with your immediate supervisor the anticipated leave schedule and notify them within 2 days of any change in said schedule. Failure to comply with this notice requirement may subject you to the attendance policy as set forth in the collective bargaining agreement. Re-certification will be required if:

- a) there is a request for extension of leave;
- b) circumstances described by the original certification have changed significantly (e.g. the duration of the illness, the nature of the illness, complications, etc.); or
- c) we receive information that casts doubt upon the continuing validity of the certification.

6. **EMPLOYEE RESPONSIBILITIES WHILE ON LEAVE** You may be required to furnish us with periodic reports of your status and intent to return to work every thirty (30) days while on FMLA leave. (Note: See above for medical re-certification).

7. **FITNESS FOR DUTY**: You [☒ will] [☐ will not] be required to present a fitness-for-duty certificate prior to being restored to employment. If such certification is required but not received, your return to work may be delayed until the certification is provided.

Cc: S. Crossken

EXHIBIT
Hamilton
4
6-5-07

1. DRIVER'S INFORMATION Driver completes this section.

Driver's Name (Last, First, Middle) <u>Pelleto Paul Joseph H</u>	Social Security No. <u>033-58-4883</u>	Birthdate <u>01/03/64</u>	Age <u>39</u>	Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F	New Certification <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Date of Exam <u>4-30-03</u>
Address <u>59 Rollins Street</u>	City, State, Zip Code <u>Lawrence, MA 01841</u>	Work Tel: <u>978 6857005</u>	Home Tel: <u>978 6857005</u>	Driver License No. <u>5229 17374</u>	License Class <input checked="" type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> Other	State of Issue <u>MA</u>

2. HEALTH HISTORY Driver completes this section, but medical examiner is encouraged to discuss with driver.

Yes	No	Yes	No	Yes	No
<input checked="" type="checkbox"/> Any illness or injury in last 5 years?	<input type="checkbox"/>	<input checked="" type="checkbox"/> Lung disease, emphysema, asthma, chronic bronchitis	<input type="checkbox"/>	<input checked="" type="checkbox"/> Fainting, dizziness	<input type="checkbox"/>
<input checked="" type="checkbox"/> Head/Brain injuries, disorders or illnesses	<input type="checkbox"/>	<input checked="" type="checkbox"/> Kidney disease, dialysis	<input type="checkbox"/>	<input checked="" type="checkbox"/> Sleep disorders, pauses in breathing while asleep, daytime sleepiness, loud snoring	<input type="checkbox"/>
<input checked="" type="checkbox"/> Seizures, epilepsy	<input type="checkbox"/>	<input checked="" type="checkbox"/> Liver disease	<input type="checkbox"/>	<input checked="" type="checkbox"/> Stroke or paralysis	<input type="checkbox"/>
<input type="checkbox"/> medication _____	<input type="checkbox"/>	<input checked="" type="checkbox"/> Digestive problems - <u>acid reflux</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/> Missing or impaired hand, arm, foot, leg, finger	<input type="checkbox"/>
<input checked="" type="checkbox"/> Eye disorders or impaired vision (except corrective lenses)	<input type="checkbox"/>	<input checked="" type="checkbox"/> Diabetes or elevated blood sugar controlled by:	<input type="checkbox"/>	<input checked="" type="checkbox"/> Spinal injury or disease	<input type="checkbox"/>
<input checked="" type="checkbox"/> Ear disorders, loss of hearing or balance	<input type="checkbox"/>	<input type="checkbox"/> diet	<input type="checkbox"/>	<input checked="" type="checkbox"/> Chronic low back pain	<input type="checkbox"/>
<input checked="" type="checkbox"/> Heart disease or heart attack; other cardiovascular condition	<input type="checkbox"/>	<input type="checkbox"/> pills	<input type="checkbox"/>	<input checked="" type="checkbox"/> Regular, frequent alcohol use	<input type="checkbox"/>
<input type="checkbox"/> medication _____	<input type="checkbox"/>	<input type="checkbox"/> insulin	<input type="checkbox"/>	<input checked="" type="checkbox"/> Narcotic or habit forming drug use	<input type="checkbox"/>
<input checked="" type="checkbox"/> Heart surgery (valve replacement/bypass, angioplasty, pacemaker)	<input type="checkbox"/>	<input checked="" type="checkbox"/> Nervous or psychiatric disorders, e.g., severe depression	<input type="checkbox"/>		
<input checked="" type="checkbox"/> High blood pressure	<input type="checkbox"/>	<input type="checkbox"/> medication <u>Paxil</u>	<input type="checkbox"/>		
<input checked="" type="checkbox"/> Muscular disease	<input type="checkbox"/>	<input type="checkbox"/> Loss of, or altered consciousness	<input type="checkbox"/>		
<input checked="" type="checkbox"/> Shortness of breath	<input type="checkbox"/>		<input type="checkbox"/>		

For any YES answer, indicate onset date, diagnosis, treating physician's name and address, and any current limitation. List all medications (including over-the-counter medications) used regularly or recently.

Sleep Apnea, Acid Reflux, Tremors (Situational) (Meds) Paxil, Primidone,
Dr C Hang, Salem MA Family Doctor, PC Physician (603) 892-4000
Dr Sgambetti 411 Merrimack St Methuen MA 01844 Apnea (978) 628-4665
Dr KATJUCKL Salem MA Tremors (603) 892-5829

I certify that the above information is complete and true. I understand that inaccurate, false or missing information may invalidate the examination and my Medical Examiner's Certificate.

[Signature]
 Driver's Signature

4-30-03
 Date

Medical Examiner's Comments on Health History (The medical examiner must review and discuss with the driver any "yes" answers and potential hazards of medications, including over-the-counter medications, while driving.)

sleep apnea diagnosed 1/2003. Is using CPAP machine & on Provigil. Still has some daytime drowsiness. Sometimes takes nap in middle of day after lunch, while legs
(P) call fear 4/2003. Had body 6/7/2003. Had no 2/2003.
with supervisor upon returning which led to episode of anxiety/depression. Out of work 10/1/2003 to 2/1/2003. Back to full duty without problems. He received 1st from
primidone from anxiety - 10/1/03
(P) trip 1/2/03

EXHIBIT
14

It's necessary steps to correct the condition as soon as possible particularly if the condition, if neglected, could result in more serious illness that might affect driving.

Check YES if there are any abnormalities. Check NO if the body system is normal. Discuss any YES answers in detail in the space below, and indicate whether it would affect the driver's ability to operate a commercial motor vehicle safely. Enter applicable item number before each comment. If organic disease is present, note that it has been compensated for.

See Instructions to the Medical Examiner for guidance.

BODY SYSTEM		CHECK FOR:	YES*	NO	BODY SYSTEM		CHECK FOR:	YES*	NO
1. General Appearance		Marked overweight, tremor, signs of alcoholism, problem drinking, or drug abuse.		✓	7. Abdomen and Viscera		Enlarged liver, enlarged spleen, masses, bruises, hernia, significant abdominal wall muscle weakness.		✓
2. Eyes		Pupillary equality, reaction to light, accommodation, ocular motility, ocular muscle imbalance, extraocular movement, nystagmus, exophthalmos, strabismus uncorrected by corrective lenses, retinopathy, cataracts, aphakia, glaucoma, macular degeneration.	✓		8. Vascular System		Abnormal pulse and amplitude, carotid or arterial bruises, varicose veins.		✓
3. Ears		Middle ear disease, occlusion of external canal, perforated eardrums.	✓		9. Genito-urinary System		Hernias.		✓
4. Mouth and Throat		Irremediable deformities likely to interfere with breathing or swallowing.	✓		10. Extremities - Limb		Loss or impairment of leg, foot, toe, arm, hand, finger. Perceptible limp, deformities, atrophy, weakness, paralysis, clubbing, edema, hypotonia. Insufficient grasp and prehension in upper limb to maintain steering wheel grip. Insufficient mobility and strength in lower limb to operate pedals properly.		✓
5. Heart		Murmurs, extra sounds, enlarged heart, pacemaker.	✓		11. Spine, other musculoskeletal		Previous surgery, deformities, limitation of motion, tenderness.		✓
6. Lungs and chest, not including breast examination.		Abnormal chest wall expansion, abnormal respiratory rate, abnormal breath sounds including wheezes or alveolar rales, impaired respiratory function, dyspnea, cyanosis. Abnormal findings on physical exam may require further testing such as pulmonary tests and/or xray of chest.	✓		12. Neurological		Impaired equilibrium, coordination or speech pattern; paresthesia, asymmetric deep tendon reflexes, sensory or positional abnormalities, abnormal patellar and Babinski's reflexes, ataxia.		✓

*COMMENTS:

initially overweight

Note certification status here. See Instructions to the Medical Examiner for guidance.

☐ Meets standards in 49 CFR 391.41; qualifies for 2 year certificate

☐ Does not meet standards

☒ Meets standards, but periodic evaluation required

Due to slight "puff" driver qualified only for:

☒ 3 months ☐ 1 year

☐ 6 months ☐ Other

☐ Temporarily disqualified due to (condition or medication): 2 yr card

Return to medical examiner's office for follow up on _____

If meets standards, complete a Medical Examiner's Certificate according to 49 CFR 391.43(n). (Driver must carry certificate when operating a commercial motor vehicle)

Telephone Number (781) 438-9600

Medical Examiner's Name (print) David M. Foston, M.D.

Address 61 Main Street, Stoneham, MA 02180

Telephone Number (781) 438-9600

Stoneham, MA 02180

☐ Wearing corrective lenses

☐ Wearing hearing aid

☐ Accompanied by a waiver/exemption

☐ Skill Performance Evaluation (SPE) Certificate

☐ Driving within an exempt intracity zone

☐ Qualified by operation of 49 CFR 391.64

EXHIBIT

7

6-5-07

Paul Pizzutto probable Suspicion Test, 07/16/2003

On Wednesday, July 16, 2003 at 07:00 am. Airborne FSS Chris Demmons approached me regarding the behavior of Paul Pizzutto. He told me that he had an issue with Paul the prior day about scanning his freight OFD and why he could not properly scan his DDU freight. Chris stated that during the conversation, Paul kept blaming management for his errors. He also made the statement that management was trying to sabotage the system on his scanning, and at the same time, Paul was telling Chris "he'd fix me".... "He'd get em". Chris felt that Paul was very unstable and that I needed to act.

At this point, I thought back to a similar encounter I had had with Paul the prior two days. The first being on Monday when I went out on the dock and saw Paul unloading all his DDU freight. I asked him why this was not delivered and he told me it was refused. I then asked why, and he said you tell me. He then brushed me off and told me that he will get the bastard. At this point, I backed off like I have been doing with him and let him check in with Mike Trudeau.

The following day, Tuesday July 15, 2003, Mike Trudeau said he had a situation with Paul at check-in that Monday. Mike said that Paul was very upset about his DDU stop having missing shipments and he said "Someone was doing this to him and he knew who it was". Mike asked him who was it and Paul responded, "The bald guy with glasses". Mike said Paul was very irate yelling and swearing and threatening he will take care of it.

The same day at 16:30 pm, I was arriving back at the station from a sales call. I saw Paul getting in his car so I approached him and asked how he was doing. As he was driving away with his window down, he told me, "I have nothing to say to you" and then sped off. This was very odd behavior from him with me. Since the day I came to NSH, I have made an extreme effort to reach out to him and let him know I will work with him.

After Chris had come to me and asked that I do something about Paul's threats and behavior, I confirmed with Arthur Leveris what I was observing. I confirmed that Paul's mood swings were becoming too common and that his behavior lately with supervisors was loud and boisterous. I also confirmed with Artie that Paul on more then one occasion has said that he is heavily medicated from his doctor. Based on my observations, I decided that I wanted to take Paul out of service pending a drug & alcohol test.

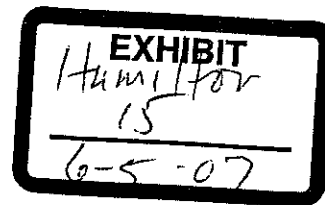
At about 0815am I brought Paul in the office and read the Airborne card that was given to us in MTP class and that we would be taking him for a drug test. He became very mad and wanted to know what I was observing. I told him based on the comments he was making to Chris Demmons that morning, and the loud

sporadic behavior myself and other supervisors had been witnessing the past 2 days.

At first Paul did not want to go but based on conversations with Jim O'Brien, Mike Ray, and Dave Vallon via phone, Paul decided to go.

While I was waiting out front for Artie to get his car keys, Paul started staring at me and made a threat that I will get mine. When I asked him if he was threatening me, he said the cops would handle me.

When we got to the Occupational Health Office, Paul was acting very strange. He was very loud in front of the entire office and patients. At one point, he walked over to the water cooler and drank about 20-25 cups of water one after another in a span of about 3 minutes. This made both Artie and I very uncomfortable. Between a few gulps, he let out a few very loud belches in the presence of other patients. This behavior also confirmed my previous observations that he was very loud and unstable.



From: JOE.HAMILTON@AIRBORNE
 To: JOE.HAMILTON
 Sent: Wednesday, 16 July 2003 2:08pm PT
 Subject: Paul Pizzutto

On Monday, 7/14/03 at or around 16:30 pm, I went out on the dock and observed Paul Pizzutto unloading approximately 30 post office DDU shipments from his truck. I asked him what these were and he look at me with a stare and said refused post office shipments... I asked why they were refused and he said because the count was wrong. I asked why was the count off and he just looked at me and brushed me off... I backed off knowing Mike Trudeau would check him in...

The next day, 07/15/03 at 16:40, I was arriving back from a day of sales calls... I saw Paul getting in his car and went to approach to see how he was doing.... As he drove by, he spoke out of the window saying to me that he had nothing to say to me and sped away.. From my experience with Paul, he has never done this to me.. He has always approached me and let me know what was bothering him...

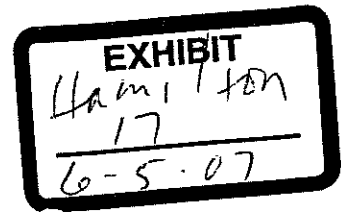
I walked in the station on Wednesday 07/16/03 at 07:00... I was approached by FSS Chris Demmons and asked to do something about Paul Pizzutto. Chris said he had some major issues with Paul the day before over his departing the building and scanning his freight... He said Paul had been acting very paranoid and strange and had even made some threatening remarks about "I will get you guys"

Based on these actions witnessed by Chris and the actions That myself, Mike Trudeau witnessed the previous 2 days, I decided that it was in all parties best interest to have Paul Drug Tested...

At 0830 am, Myself and Arthur Leveris escorted Paul Pizzutto and Jim Obrien to Occupation Health for the test. Paul was very upset and made repeated remarks to the both of us that we would get ours... At the drug test site, we observed him drink approximately 20-25 cups of water within a 3 minute span. It made us both uncomfortable.

After the test, I drove Paul back and told him that we would call him when the results came in.

Joe Hamilton
 DFSM - NSH



From: JOE.HAMILTON
To: JOE.HAMILTON
Sent: Monday, 21 July 2003 8:07am PT
Subject: Paul Pizzutto

07/21/2003 (Monday AM)

I had a meeting with Paul Pizzutto this am regarding his probable cause test results and to put on record my observations of his behavior and to let him know that I would not tolerate any more threats at the work place.

Present at the meeting were
Paul Pizzutto
Gerry Halloran

Arthur Leveris
Joe Hamilton

I started the meeting letting Paul know that his test results came back negative and that we would pay him for lost time plus any differential owed to him. At this point he started making demands about wanting all email and documents from the test. I told him all I get is a social security number and a positive or negative result. All other info is covered under his privacy policy that he signed at the doctors office. I then told him that I wanted to say what I needed to say and he needed to listen.

I told him that his behavior over the past 3 months has become an issue at the station and I need it to be addressed. I explained to him that his mood swings were too common and that his paranoid behavior was effecting his job. I told him I am not a doctor but based on last week and the fact that he made specific threats to 4 supervisors including myself caused me great concern and I needed it to stop. I explained to him the next threat or statement that can be interpreted as a threat, I will take action including termination.

Paul then asked specifically who did he threaten... He wanted names... I told him Myself, Artie Leveris, Chris Demmons and Mike Trudeau. He said what was the threat. I told him the statement of "he is going to get someone"... "Wait till I get him".. When he told me "Joe, you will get yours" He then said those are not threats to specific people. They are just statements I made that when I find out who is screwing with me, I will handle.

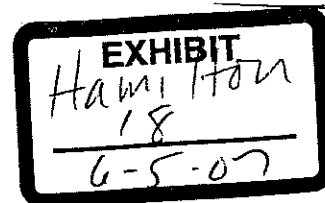
He then said that since February, he has had 4 instances where freight has been ofd scanned by him and then ND at the end of the day, Only to be delivered by another driver. I then pointed out to him that during any of those 4 instances, did I or any supervisor discipline him for missing freight? He answered no. I then said that most of these errors are his and that he has missed ofd scan on freight and that we have caught this during audit scans. Further more, I told him that since my first days here, I have instructed my supervisors that if they have any issues with Paul Pizzutto, that I would handle him. I instructed them to give Paul some room and let him work out his stress issues.

I then told him that I could no longer do that because his issues were becoming threatening and causing stress among my supervisors. I told him I have a responsibility to the entire station and that he needed to work under the guidelines of the station. I instructed him that if he had any issues with missing freight, he needed to let Gerry Halloran know. if he had any issues with me or any supervisors, He needed to write it up and give to Gerry.

Other topics that came up during the conversation were:

His prescribed medication and that I should call Seattle or his doctor and ask them if he is all right.
His advising me that he will be filing a harassment case against me.
His advising me that I could not take away his freedom of speech.

Joe Hamilton
DFSM - NSH



From: JOE.HAMILTON
To: JOE.HAMILTON
Sent: Tuesday, 22 July 2003 2:57pm PT
Subject: Paul Pizzuto 7/22/03

Paul came off the road today and had some very strange issues with his manifest. Ref awb 4013241916... AWB shows an LD scan at 0905 and an ofd scan at 1650... Initial appearances seem to suggest he used 2 scanners... One in the am to ofd his freight and a different one to delv with.... Downloading both at 1650..

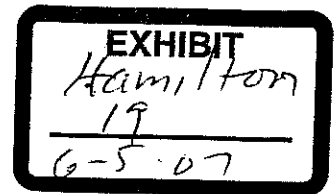
He also had an ND shipment on his manifest awb 25211519163... When researched, it was obvious that the awb was a duplicate awb in the system... One ob from station BOI not alerted and the 2nd OB from PNO going to Methuen MA. Paul felt that a conspiracy was going on and wanted to know why there was an ND... When I tried to explain to him that it was 2 shipments under the same number, he would not listen and walked away...

At 1740, Paul called customer the 1800 customer service number claiming to be a customer Gnciss and wanted to know where his shipment was... He gave the above AWB number. 1800 Airborne put him through to NSH for resolution. When Paul realized he was talking to Katie Suprenet, he identified himself and wanted info on the awb. I was standing next to Katie and asked if I could speak to Paul. I told Paul we had better things to do with our time and he should call Seattle if he had an issue.

2 more examples of Pauls Paranoia schizophrenia....

Joe Hamilton
DFSM - NSH

Exhibit 18

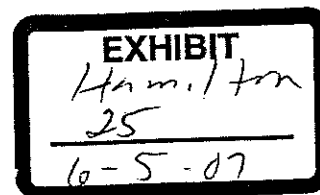


From: JOE.HAMILTON
To: JOE.HAMILTON
Sent: Wednesday, 23 July 2003 5:55am PT
Subject: Paul Pizzuto, 7/23/03...07:02 am

I had all the am drivers in the lobby this am to view the Chairman's message on the merger (Video)..... I was positioned to the right of the TV leaning against the table. Paul Pizzuto was sitting to the left of the TV about 15 ft away. During the video, I glanced over at Paul only to notice him staring at me with a very serious look in his eye. I turned away so as to not add any more tension to the situation. On two other instances during the 7 minute video, I looked over at Paul sensing he was still staring at me. My looks confirmed this, but I turned away both times.

At 0830, I instructed Greg Sweatt to audit scan Paul Pizzuto's truck. I told him I needed a 100% scan so I can confirm all freight is OFD scanned. Paul has been complaining to me on a regular basis that someone is messing with his truck. If I audit him each day, I can prove what is on his truck at depart time.

Joe Hamilton
DFSM - NSH



From: JOE.HAMILTON
To: JOE.HAMILTON
Sent: Thursday, 24 July 2003 2:34pm PT
Subject: Paul Pizzuto, Thursday 7/24/03

I met with BOS Chief Stewart Joe Quigley, and NSH Stewart Gerry Halloran today to discuss my concerns about Paul Pizzuto. I explained to them that Paul had made threats to two of my supervisors this am. These threats were made after the discussion I had with him on Monday warning him that any threats will be dealt with in a serious manner.

Gerry went on to tell myself and Quigley that he felt Paul needed medical help because he had a similar experience this am. Paul was mad over the way his paycheck was processed.

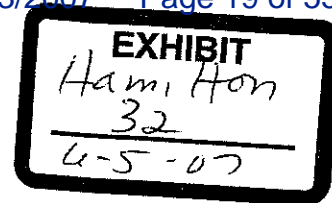
After an hour of debate, the 3 of us decided that Gerry and Joe Q would take Paul aside when he came off the road and ask him if he needed help. They were going to offer the unions disability benefits and refer him to the Teamster doctor for help. It was also determined that if he did not think he needed the help, then he would need to meet with Myself and Artie to be issued a Written Warning stating he will be put out of service for Just Cause if he made any more threats or aggressive gestures. He was also going to receive a written warning for failure to ofd a shipment in the am.

When Paul came off the road, Joe Q and Gerry met with him briefly, the only topic that came up was about his check and he blew up and started yelling at them... I did not witness this... Mike Trudeau was in the area... Paul did not allow Them to speak to them and left. Gerry told Paul that I wanted to see him but he just walked out.

Gerry and I agreed that we would pull him off the sort in the am and issue the warnings and pursue the dicipline.

Joe Hamilton
DFSM - NSH

Exhibit 20



From: JOE.HAMILTON@AIRBORNE
 To: JOE.HAMILTON
 Cc: ARTHUR.LEVERIS, DAVID.FAIRWEATHER, RICK.RIOJA, ROBERT.MERGENHAGEN
 Sent: Friday, 25 July 2003 6:38am PT
 Subject: Paul Pizzuto 7/25/03

I terminated Paul Pizzuto this am under article 47, Just Cause.

The NSH supervisor team has had an ongoing issue with Paul's threatening behavior and paranoia for some time now. Over the past few weeks, his behavior has escalated to a point where I feel he is a safety risk for the station personal and himself.

After a long discussion on Thursday with Joe Quigley, Chief Stewart Local 25, and Gerry Halloran, NSH Stewart Local 25, we all came to the same conclusion that something was not right with Paul. Earlier in the am, Paul had an issue with the way his paycheck was processed and this really fired him up. On his way out of the building, he made threatening remarks to three supervisors, Greg Sweatt, Tim Carter & Mike Trudeau. Because of the remarks, I decided that Paul needed to be issued written discipline under the just cause language.

Thursday afternoon, I had Both Joe Quigley and Gerry Halloran wait at the NSH station for Paul to arrive. The plan was for them to have a private conversation with Paul and offer the union's disability resources as help. Depending how that conversation went, I was prepared to issue Paul a written letter putting him on notice that the next threatening remark or gesture, he will be terminated on the spot.

When Paul arrived off the road, the only conversation he wanted to have with Joe and Gerry was regarding his check. Gerry presented him with a separate check and explained to him that it came in this am addressed to Joe Hamilton. This infuriated Paul more. He started yelling at both Gerry and Joe and stormed out. Gerry told Paul he that I wanted to see him but Paul ignored Gerry and went home. (I did not witness any of these conversations, Mike Trudeau was close by)

After Paul left the building, I told Joe and Gerry that when Paul reported to work on Friday, I would issue the letter.

On Friday 07/25/03 at 0710, I arrived at the station. FSS Greg Sweatt reported to me that Paul Pizzuto had driven his car onto the dock in a reckless manner this am. Greg said the only thing that went through his mind was to hit the deck. He said when Paul got out of the car, he ran to the clock and punched in. The he returned to his car and pealed out in reverse.

I then approached Arthur Leveris and he confirmed Greg story. Arthur said he had the same failing when he saw Paul's car come into the building.

At 0720, Gerry Halloran arrived back to NSH from the aircraft. I told Gerry that we were bring Paul in the office concerning the Warning Letter but that we also had an incident this am that I was real concerned about. I told him that depending on how the meeting went, I was prepared to put Paul out on termination.

At 0725, myself, Arthur Leveris, Gerry Halloran and Paul Pizzuto had a meeting in the NSH Conference room. I told Paul that I had real concerns about his behavior and that he was a safety issue at NSH. I asked him if he thought he needed any medical help, and if so, that I would work with Airborne and Local 25 to help provide that help. He would not respond to me other then to say that he was in here to receive discipline, so issue the discipline. I then said I was prepared to issue him 2 warning letters yesterday afternoon but he decided to leave the building before I could. The first letter was for Careless performance of duties, specifically not of scanning his freight, and the second was a written warning putting him on notice that based on the threats made to three supervisors on Thursday am, any future threat or gesture, he would be terminated.

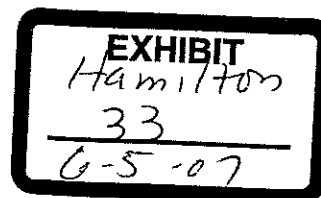
He asked me if I was telling him to punch out because he was going to leave and go directly to his doctor.

He said he was going to have his doctor write a note saying he was fine to come to work. He then said he would be going on FMLA under stress.

I told him that based on his actions this am with his personal car, driving it in the building in a reckless manner, that I was classifying that as a threatening gesture and termination him for just cause. I issued him the warning for Thursdays actions and a termination for the actions in the am.

I had him turn in his badge and scanner and escorted him off the property.

Joe Hamilton
DFSM - NSH



Name: Paul Pizzuto

Certified Mail #

By reason of your conduct described below, it is necessary to issue this notice of:

	WARNING	EFFECTIVE:
	SUSPENSION	EFFECTIVE:
XXX	DISCHARGE	EFFECTIVE:

ARTICLE 35, SECTION 3
 CARELESS AND NEGLECTFUL PERFORMANCE OF DUTIES
 INSUBORDINATION
 GROSS NEGLIGENCE
 ATTENDANCE
 FAILURE TO FOLLOW INSTRUCTIONS/DIRECT WORK ORDER
 FAILURE TO MEET JOB REQUIREMENTS
 THEFT AND DISHONESTY
 XXX JUST CAUSE

SPECIFICALLY:

This letter is being issued pursuant to article 47 of the National Master Freight Agreement and the New England Supplemental Agreement. Based on your action on the morning of 07/25/03 of driving your car on to the dock and peeling in reverse, Management viewed this as intimidating and threatening behavior.

FIELD SERVICES SUPERVISOR

Employee

Local 25 (Certified)

Regional Manager

District Manager

Employee File

Shop Steward

7/25/03
 SUPERVISOR SIGNATURE DATE

7/25
 EMPLOYEE SIGNATURE DATE

as witness
 UNION REPRESENTATIVE DATE

7-25-03
 AIRBORNE REPRESENTATIVE DATE

Exhibit 22

EXHIBITItem 1/ton
28
6-5-07

Name: Paul Pizzuto

Certified Mail #

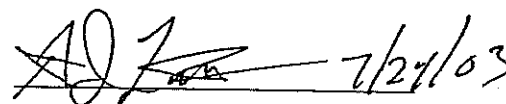
By reason of your conduct described below, it is necessary to issue this notice of:

XXX WARNING
SUSPENSION
DISCHARGEEFFECTIVE:
EFFECTIVE:
EFFECTIVE:ARTICLE 35, SECTION 3
CARELESS AND NEGLECTFUL PERFORMANCE OF DUTIES
INSUBORDINATION
GROSS NEGLIGENCE
ATTENDANCE
FAILURE TO FOLLOW INSTRUCTIONS/DIRECT WORK ORDER
FAILURE TO MEET JOB REQUIREMENTS
THEFT AND DISHONESTY

XXX JUST CAUSE

SPECIFICALLY:

This letter is being issued pursuant to article 47 of the National Master Freight Agreement and the New England Supplemental Agreement. If you make any type of threatening comment or intimidating gestures, you will be taken out of service immediately. Verbal Harassment and intimidating looks will not be tolerated in the workplace. Future violations of this kind will result in your termination with Airborne Express.



FIELD SERVICES SUPERVISOR

Employee

Local 25 (Certified)

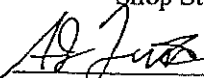
Regional Manager

District Manager

Employee File

Shop Steward

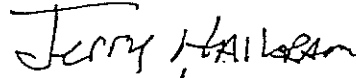
7002 0800 0007 7367 0623



SUPERVISOR SIGNATURE

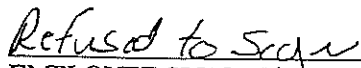
7/24/03

DATE



UNION REPRESENTATIVE

DATE



EMPLOYEE SIGNATURE

7/25

DATE




AIRBORNE REPRESENTATIVE

7-25-03

DATE

Exhibit 23

Holy Family Hospital & Medical Center  Holy Family Hospital 70 East Street, Methuen	Patient Information PIZZUTO, PAUL 69 ROLLINS ST Phone: (978)685-9005 ID:	Treating Provider RONALD TEITLER MD 70 East Street, Methuen Phone: 978-687-0156 ext 211	Discharge Summary Date: 7/25/03 Time: 10:04:23 AM <h1>Chart Copy</h1>
--	---	---	--

DEPRESSION #Document: 103 	
--	--


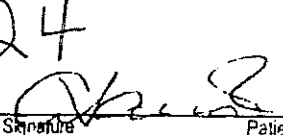
Follow Up Location GREATER LAWRENCE MENTAL HEALTH, PSYCHIATRY 30 GENERAL ST LAWRENCE, MASS.01843 Phone: 978 683 3128	Follow Up Information On 07/25/2003 this patient was treated in the Emergency Department of Holy Family Hospital at 70 East Street, Methuen for DEPRESSION. The patient was asked to follow up Today.
--	---

I understand that the emergency care which I received is not intended to be complete and definitive medical care and treatment. I acknowledge that I have been instructed to contact the above physician immediately for continued and complete medical diagnosis, care and treatment. EKG's, X-rays, and lab studies will be reviewed by appropriate specialists and I will be notified of significant discrepancies. I also understand that my signature authorizes this Medical Center to release all or any part of my medical record (including, if applicable, information pertaining to AIDS and/or HIV testing, mental health records, and drug and/or alcohol treatment) to the referred physician listed above.

I have read and understand the above, received a copy of applicable instruction sheets, and will arrange for follow up care.

Exhibit 24

MED 00115

 Signature	Patient/Parent/Guardian	 Signature	Patient/Parent/Guardian
Date/Time	Date/Time	Date/Time	Date/Time

CONFIDENTIAL INFORMATION: The information contained in this fax is confidential. If you have received this fax in error, please notify the sender at once and destroy this document.

FORM 16-50

H0 694690 ED.HF
07/1/03 J3

PIZZUTO, PAUL J

M 39 01/03/1964 HF0063956
Trombly, Claudia G MD

© 1996 - 2002 T-System, Inc. Circle or check affirmatives, backslash (/) negatives.

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Holy Family Hospital and Medical Center
EMERGENCY PHYSICIAN RECORD
Psych Disorder, Suicide Attempt, Overdose (5)TIME SEEN: 0950 ROOM: 5 EMS ArrivalHISTORIAN: patient family paramedics translatornursing home notesHX / EXAM LIMITED BY:HPI chief complaint(s):

Suicidal Thoughts <u>Depression</u>	Suicide Attempt
Agitated <u>Anxiety</u>	Self-Injury
Hallucinating	Intentional Drug Overdose
Onset- <u>1/24/05</u>	Accidental Drug Ingestion
Worsened since- <u>today</u>	
<u>severity-</u>	When?
mild moderate severe	

context:

☒ situational problems

related to: spouse / parent / son / daughter / significant other
work / lost job / school / legal problems

suicide attempt

current / associated complaints:

depressed / angry / frustrated / agitated / hostile / paranoidconfused / hallucinatingsuicidal thoughts / specific plan / gesture or attemptingestion (see list below)

suicide attempt wanted to "escape" accidental will not answer

incised / abraded wrist (R / L)

LIST OF SUBSTANCES INGESTED (if applicable)

name	strength	# taken	when taken
acetaminophen	Y / N		
aspirin	Y / N		
ethanol	Y / N		

"RESCUE FACTOR" (if suicide attempt)-

How did ingestion / other acts come to attention?

Arrived by: ☒ private car ambulance (who called?)
☐ police patient spouseRecently seen / treated by doctor

ROS

CVS / PULMONARY

cough
trouble breathing
chest pain

CONST

fever
chills

NEURO / EYES

headache
visual disturbance

GI / GU

abdominal pain
nausea
vomiting
diarrhea
problems urinating

SKIN / LYMPH / MS

skin rash / swelling
joint painAll systems neg. exceptPAST HX negative

prior suicide attempt

psychiatric problemsdepression bipolar disorder
schizophrenia otherother problems depression

cardiac disease

hypertension

diabetes insulin / o

lung disease

+ HIV / AIDS

Surgeries:

tonsillectomy

cholecystectomy

appendectomy

hysterectomy

Medications none ☒ see nurses noteAllergies ☒ see nurses

SOCIAL HX

smoker chew drugs
recent alcohol use / binge drinking / alcoholism hardmarital status: single married children:

FAMILY HX

mental illness depression

☒ Nursing Assessment Reviewed ☒ Vitals Reviewed
PHYSICAL EXAM Alert Lethargic Obtunded
 Distress NAD Mild moderate severe
 uncooperative for exam

EENT
 nml ENT inspection depressed / absent gag reflex
 pharynx nml abnormal TM (R / L)
 if obtunded: dry mucosa
 nml gag reflex gag reflexed diminished / absent
EYES nystagmus
 pupils equal, round disconjugate gaze
 & reactive to light mydriasis / miosis / anisocoria
 EOM's intact R Pupil mm L Pupil mm

NEURO / PSYCH
 mental status slow / no response to commands
 mood / affect nml withdraws to pain no response to pain
 depressed affect
 fearful / hostile / non-communicative
 suicidal ideation

For suicide attempts: On direct query, patient ADMITS / DENIES
 continued consideration of suicide as an option.
 If denies, why?

orientation
 normal x3 uncooperative / cannot determine
 disoriented
 to: day-of-week day-of-month
 month year place person

cranial nerves
 sensory, motor
 CN's intact as tested facial droop / CN abnormality
 nml motor response motor / sensory deficit
 nml sensory response
 nml reflexes abnormal gait
 nml gait

NECK / BACK
 normal inspection cerv. lymphadenopathy (R / L)
 neck supple thyromegaly / meningismus

RESPIRATORY
 no resp. distress wheezing
 breath sounds nml rales / rhonchi

CVS
 regular rate, rhythm irregularly irregular rhythm
 heart sounds normal bradysystoles (occasional / frequent)
 tachycardia / bradycardia
 NO

ABDOMEN
 non-tender guarding
 nml bowel sounds hepaticomegaly / splenomegaly
 no organomegaly

SKIN
 color nml, no rash cyanosis / diaphoresis / pallor
 warm, dry skin rash

EXTREMITIES
 non-tender laceration
 normal ROM pedal edema
 no signs of injury
 no pedal edema

PROCEDURES: ☐ Restraints
☐ Intubated by ED physician nasal/oral # ET tube
 breath sounds equal tube position confirmed w CXR
☐ Gastric Lavage pill fragments recovered
☐ Charcoal gm given Sorbitol oz given

H00047894690 ED.HF
 07/26/03

PIZZUTO, PAUL J
 M 39 01/03/1964 HF00639563
 Trombly, Claudia G MD

LABS, EKG, XRAYs and PROGRESS

CBC	Chemistries	ABGs	Toxicology
normal except	normal except	time:	normal except
WBC	Gluc	pH	acetamin.
Hgb	BUN	pCO2	aspirin
Hct	Creat	pO2	ETOH
Platelets	Na	RA	Triage™ urine
segs	K	O2 L	drug screen
bands	Cl		
lymphs	CO2		

EKG MONITOR STRIP NSR Rate
EKG NML ☐ Interp. by me ☐ Reviewed by me Rate
 NSR nml intervals nml axis nml QRS nml ST/T
 not / changed from:
CXR ☐ Interp. by me ☐ Reviewed by me ☐ Discd w/ radiologist
 nml/VAD no infiltrates nml heart size nml mediastinum
 not / changed from:
Pulse Ox 95% on RA L / % at (time)
 Time unchanged improved re-examined

Rx given
 Discussed with Dr. Time
 Discussed with Dr. Time
 Discussed with Dr. Time
 will see patient in: office / ED / hospital

INTERVIEW WITH OTHER RESPONSIBLE ADULT:

Name: Relationship:
 Considers ongoing suicide risk: high low uncertain
 Capable / comfortable with observing patient at home? Yes No N/A
MEDICAL CLEARANCE FOR PSYCHIATRIC REFERRAL (if needed)
 Back slash to indicate that diagnosis is unlikely based on H&P and, when needed, lab testing.
 • Toxic (PCP, Amphetamines, Hallucinogens, Acetaminophen, ASA, ETOH, Other)
 • Infectious (Meningitis, Encephalitis, Sepsis)
 • Metabolic (Thyroid, Hypoglycemia, Drug Withdrawal, Hypoxemia, Electrolytes)
 • CNS Vascular and Other (CVA, TIA, Seizure, Trauma)
 • Other Unstable Co-morbidities Cleared medically for psych referral

Counseled patient / family regarding: CRIT CARE- 30-74 min
 lab results diagnosis need for follow-up 75-104 min min
 Admit orders written Additional history from:
 Prior records ordered family caretaker paramedics

CLINICAL IMPRESSION:

Ethanol Intoxication Psychosis Schizophrenia - acute exac.
 Depression major manic
 Suicide Attempt / Ideation

DISPOSITION: ☒ home ☐ admitted ☐ transfer
CONDITION: ☐ unchanged ☐ improved ☒ stable

Copy to PCP / Dr.:

RONALD E. TEITLER, M.D.
 NP / PA
 MD / DO
☒ Template Complete ☐ Addendum ☐ Progress Sheet

HOLY FAMILY HOSPITAL AND MEDICAL CENTER
EMERGENCY DEPARTMENT
Psychiatric Emergency Caremap
2/01

H00047694690 ED.HF
01/03



PIZZUTO, PAUL J
M 39 01/03/1964 HF00639563
Trombly, Claudia G MD

ADDRESSOGRAPH

TRIAGE

Safety & Risk Factors	<p>Current Suicidal Ideation and/or Attempt</p> <p>Previous History of Suicidal Activity</p> <p>Hallucinations: Auditory and/or Visual Delusions</p> <p>Homicidal Ideation and/or Assaultive Behavior</p> <p>Current and/or Past Treatment for Depression</p> <p>Medications: <u>see list</u></p> <p>Last Counsel Session: <u>prev. counsel Taksby</u></p> <p>Provider: _____</p> <p>Previous Hospitalization: <u>DONIES</u></p> <p>Substance Use/Abuse: Last Use: <u>DONIES</u></p> <p>ETOH Use/Abuse: Last Use: <u>DONIES</u></p> <p>Accompanied to ED by: <u>self</u></p> <p>Disposition to/with: _____</p> <p>Time: _____</p> <p>RN Signature: <u>Dmitriy</u></p>	<p><u>Severely depressed,</u> <u>anxious, crying</u> <u>not taking any</u> <u>meds of anxiety -</u> <u>Denies SI</u> <u>Denies</u></p> <p>DMH Counselor: _____</p> <p>Legal Guardian: _____</p>
Monitoring	<p>Patient is Oriented Time/Place/Person</p> <p>Patient is Compliant and Cooperative</p> <p>Patient Safety Search Performed</p> <p>Belongings Removed, Bagged Outside of Room and Patient Placed in Hospital Gown</p> <p>One on One Required</p> <p>ED MD Notified: _____</p>	
Assessment	<p>ED MD Exam and Evaluation</p> <p>Medical Admission</p> <p>Section 12A Completed and Signed</p> <p>Restraint Protocol Initiated</p> <p>Lab - Toxicology Screen HCG, CBC, ED7</p> <p>Drug Levels: _____</p> <p>Consult Agency: _____</p>	<p>Time: _____</p> <p>Time: _____</p>

DATE: 7/25/03 ARRIVAL TIME: 0905

TRIAGE ASSESSMENT

ARRIVED BY: ☒ WALKED ☐ CARRIED ☐ WHEEL CHAIR
☐ AMBULANCE
☐ POLICE ☐ HELICOPTER
ACCOMPANIED: ☐ SELF ☐ FRIEND ☐ FAMILY
☐ OTHER
TRIAGE INDEX: ☐ EMERGENT ☒ URGENT ☐ ELECTIVE
LANGUAGE: ENG ☐ INTERPRETER CALLED

CHIEF COMPLAINT Feeling depressed/angry
States was "discharged" from job
TRIAGE ASSESSMENT INCLUDING PRE-HOSPITAL INTERVENTIONS:

TIME: today - Danvers ST W HI -
Prer. seen by counselor in Tewksbury
Danvers substance abuse - Danvers
by psych admissions - O-Alert
Unk, cooperative, crying

PAIN # _____

VITAL SIGNS: BP 158/99 P 68 R 20 T 97.4
 POx 98 Wgt _____ Kg
 V.A. OD N/A OS _____ OU _____ ☐ CORRECTED
 LMP N/A Peak Flow _____

IMMUNIZATION: ☐ UP TO DATE ☒ UNKNOWN ☐ Last dt: _____

IF UNKNOWN, PLAN: _____

CURRENT MEDICATIONS

Prolosec
Bimadol
Paxil
Proair

PAST MEDICAL HISTORY

☐ POTENTIAL RISKS ☐ YES ☐ NO

Anxiety
Sleep apnea / CPAP @ mox

ALLERGIES: ☒ N/A ☐ ALLERGIC TO LATEX

ALLEGED/SUSPECTED ABUSE ASSESSMENT:

DOMESTIC VIOLENCE: ☐ YES ☒ NO ELDER ABUSE ☐ YES ☒ NO

CHILD ABUSE/NEGLECT ☐ YES ☒ NO

OTHER: _____

ARE THERE ANY CULTURAL/RELIGIOUS PRACTICES THAT WOULD INFLUENCE YOUR CARE? ☐ YES ☒ NO

SPECIFY: _____

TRIAGE INTERVENTIONS:

☐ XR ☐ OTHER: _____

☒ DIRECT TO TREATMENT ROOM

☒ CORE ☐ PEDI ☐ PEDI FT ☐ ADULT FT

SIGNATURE: Dm1one RN

EDUUREC 10/01

H00047694690
 07/26/03

PIZZUTO, PAUL J

M 39 01/03/1964 HF00639563
 Trombly, Claudia G MD

SECONDARY ASSESSMENT

RESPIRATORY ☐ N/A

AIRWAY

☐ PATENT
☐ COUGH
☐ DYSPNEA
☐ OTHER

BREATH SOUNDS

L ☐ CLEAR ☐ R
☐ RALES ☐
☐ WHEEZES ☐
☐ DIMINISHED ☐

CARDIAC

MONITOR PATTERN:

EDEMA ☐ YES ☐ NO

WHERE? _____

PAIN ☐ YES ☐ NO /10

LOCATION? _____

NEUROLOGICAL ASSESSMENT ☐ N/A

GLASCOW COMA SCALE

	Arrival	PUPILS
Eye Opening		R size
Verbal React		R react
Motor		L size
Total		L react

EYE OPENING
 1. SPONTANEOUSLY
 2. TO PAIN
 3. TO VERBAL COMMAND
 4. NO RESPONSE

VERBAL RESPONSE
 1. ORIENTED AND CONVERSES
 2. DISORIENTED AND CONVERSES
 3. INAPPROPRIATE WORDS
 4. INCOMPREHENSIBLE SOUNDS
 5. NO RESPONSE
 6. NO RESPONSE BECAUSE OF INJURY

MOTOR RESPONSE
 1. OBEYS VERBAL COMMAND
 2. LOCALIZES PAIN
 3. FLEXION WITHDRAWAL
 4. ABNORMAL FLEXION DECORTICATE
 5. ABNORMAL EXTENSION DECEREBRATE
 6. NO RESPONSE

NOTE:
 ADD "T" (INTUBATED)
 AND/OR
 "P" (PARALYTIC DRUGS)
 TO TOTAL SCORE

PUPILS (mm)
 N = NORMAL; S = SLUGGISH; F = FIXED

2mm	3mm	4mm	5mm	6mm	7mm	8mm
●	●	●	●	●	●	●

GI/GU ☐ N/A ☐ Dysuria

ABD: ☐ Flat ☐ Obese ☐ Distended ☐ Bowel Sounds

Pain on Palpitation: ☐ Yes ☐ No Where _____

Incontinent: ☐ Yes ☐ No ☐ Urine ☐ Stool

MUSCULOSKELETAL ☐ N/A Pain on Palpation: _____

Deformity _____ Swelling: _____

Rom/Sensation: _____

Pulses

	L	R
DP		
PT		
Radial		
Femoral		
Carotid		

PULSES
 1. Bounding
 2. Normal
 3. Weak, Thready
 4. Doppler only
 5. Absent

CAPILLARY REF
 NORMAL < 2 SEC.
 DELAYED > 2 SEC.

	L	R
Fingers		
Toes		

SKIN ☐ N/A ☐ Color: _____ ☐ Temperature: _____

☐ Laceration: _____ ☐ Rash: _____ ☐ Lesion: _____

☐ Abrasion: _____ ☐ Puncture: _____

☐ Erythema: _____ ☐ Other: _____

BEHAVIORAL ASSESSMENT

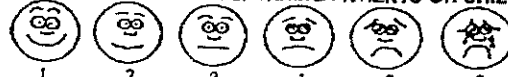
☐ Anxious ☐ Cooperative ☐ Healthy Appearance ☐ Thin
☐ Depressed ☐ Uncooperative ☐ Obese ☐ Unkemp
☐ Hostile ☐ Agitated ☐ Cachectic
☐ Other: _____ ☐ Other: _____

< 18 YRS. AT APPROPRIATE DEVELOPMENTAL LEVEL: ☐ YES ☐ NO
 IF NOT, WHY? _____

PAIN ASSESSMENT

PAIN ☐ No ☐ Yes Adult 1 - 10 /10 Location: _____

PAIN FOR NON ENGLISH SPEAKING PATIENTS OR CHILD



SIGNATURE: _____

MED 00114

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<p>Pages: 1 - 121 Exhibits: 1 - 39</p> <p>UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS C.A. NO. 04-12492GAO</p> <p>PAUL PIZZUTO,) Plaintiff,)</p> <p>v.)</p> <p>AIRBORNE EXPRESS, INC.,) et al.,) Defendants.)</p> <p>DEPOSITION OF JOSEPH M. HAMILTON, Jr., called as a Witness by Counsel for the Plaintiff, pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before Ann M. Lavoie, Court Reporter and Notary Public in and for the Commonwealth of Massachusetts, taken at the Law Office of Richard A. Mulhearn, 41 Elm Street, Worcester, Massachusetts 01609, on Tuesday, June 5, 2007, commencing at 10:10 a.m.</p> <p>*****</p> <p>FLYNN REPORTING ASSOCIATES Professional Court Reporters One Exchange Place Worcester, Massachusetts 01608 (508) 755-1303 * (617) 536-2727 TOLL FREE: (888) 244-8858 FAX: (508) 752-4611 *****</p>		<p>INDEX</p> <p>Deposition of: Pages</p> <p>Joseph M. Hamilton, Jr.</p> <p>By Mr. Mulhearn 9</p>																																																	
<p>Page 2</p> <p>APPEARANCES</p> <p>LAW OFFICES OF RICHARD A. MULHEARN By: Richard A. Mulhearn, Esq 41 Elm Street Worcester, Massachusetts 01609 508-753-9999</p> <p>Appearing for the Plaintiff</p> <p>SULLIVAN WEINSTEIN & MCQUAY, P.C. By: C. Max Perlman, Esq. Two Park Plaza Boston, Massachusetts 02116 617-348-4300</p> <p>Appearing for the Defendants</p> <p>Exhibit 25</p>		<p>EXHIBITS</p> <table border="1"> <thead> <tr> <th>No.</th> <th>Description</th> <th>Page</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Resume of Joseph M. Hamilton</td> <td>7</td> </tr> <tr> <td>2</td> <td>Pizzuto Coaching/Disciplinary Action Log</td> <td>7</td> </tr> <tr> <td>3</td> <td>Paul Pizzuto Suspension/Discharge</td> <td>7</td> </tr> <tr> <td>4</td> <td>Driver Fitness Determination</td> <td>7</td> </tr> <tr> <td>5</td> <td>Airborne Express/Memorandum for Record, Dated 6/18/03</td> <td>7</td> </tr> <tr> <td>6</td> <td>2003 Attendance Controller Calendar</td> <td>8</td> </tr> <tr> <td>7</td> <td>Paul Pizzuto Probable Suspicion Test July 16, 2003</td> <td>8</td> </tr> <tr> <td>8</td> <td>Union Contract Excerpt Probable Suspicion Testing for Drugs and Probable Suspicion for Alcohol</td> <td>8</td> </tr> <tr> <td>9</td> <td>Affidavit Joe Hamilton</td> <td>8</td> </tr> <tr> <td>10</td> <td>Email from Michael Trudeau to Joe Hamilton, Arthur Leveris</td> <td>8</td> </tr> <tr> <td>11</td> <td>Email from Christopher Demmons to Joe Hamilton, Dated 7/16/2003</td> <td>8</td> </tr> <tr> <td>12</td> <td>Bill McLellan to Joe Hamilton Dated 7/16/2003</td> <td>8</td> </tr> <tr> <td>13</td> <td>Email from Ben Brown to Joe Hamilton, Dated 7/16/2003</td> <td>8</td> </tr> <tr> <td>14</td> <td>Email from Arthur Leveris to Joe Hamilton, Dated July 16, 2003</td> <td>8</td> </tr> <tr> <td>15</td> <td>Email from Joe Hamilton to Joe Hamilton, Dated July 16, 2003</td> <td>9</td> </tr> </tbody> </table>		No.	Description	Page	1	Resume of Joseph M. Hamilton	7	2	Pizzuto Coaching/Disciplinary Action Log	7	3	Paul Pizzuto Suspension/Discharge	7	4	Driver Fitness Determination	7	5	Airborne Express/Memorandum for Record, Dated 6/18/03	7	6	2003 Attendance Controller Calendar	8	7	Paul Pizzuto Probable Suspicion Test July 16, 2003	8	8	Union Contract Excerpt Probable Suspicion Testing for Drugs and Probable Suspicion for Alcohol	8	9	Affidavit Joe Hamilton	8	10	Email from Michael Trudeau to Joe Hamilton, Arthur Leveris	8	11	Email from Christopher Demmons to Joe Hamilton, Dated 7/16/2003	8	12	Bill McLellan to Joe Hamilton Dated 7/16/2003	8	13	Email from Ben Brown to Joe Hamilton, Dated 7/16/2003	8	14	Email from Arthur Leveris to Joe Hamilton, Dated July 16, 2003	8	15	Email from Joe Hamilton to Joe Hamilton, Dated July 16, 2003	9
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<p style="text-align: right;">Page 61</p> <p>1 Q. It related to drugs or alcohol compared to</p> <p>2 something else?</p> <p>3 A. Yeah.</p> <p>4 Q. I'm just trying to identify this piece of</p> <p>5 information in front of us.</p> <p>6 This email from Trudeau, Exhibit 10 here,</p> <p>7 was one of the incidents that was being relayed to</p> <p>8 you; correct?</p> <p>9 A. Yeah. It was an incident of a threat being</p> <p>10 relayed to me.</p> <p>11 Q. There's a phrase there; the bald guy with</p> <p>12 glasses who was doing something -- allegedly doing</p> <p>13 something to Mr. Pizzuto.</p> <p>14 That reference you understood?</p> <p>15 A. No.</p> <p>16 Q. I'm looking at you.</p> <p>17 It wasn't you.</p> <p>18 A. No.</p> <p>19 Q. That was nonsense to you?</p> <p>20 A. Absolutely no sense.</p> <p>21 Q. Let me show you Exhibit 11.</p> <p>22 MR. MULHEARN: For the record,</p> <p>23 it's an email dated July 16, 2003 from Christopher</p> <p>24 Demmons to the witness.</p>	<p style="text-align: right;">Page 63</p> <p>1 150 employees that, at various stages, were out on</p> <p>2 different reasons.</p> <p>3 This wouldn't be anything that would jump</p> <p>4 out at me as not normal. In the course of a day, I</p> <p>5 would be getting reports on lots of things.</p> <p>6 Q. By virtue of this email of you being told</p> <p>7 by Demmons that Pizzuto was out for mental health</p> <p>8 issues; is that fair to say?</p> <p>9 MR. PERLMAN: Objection.</p> <p>10 A. Yes. Chris's first sentence, that's what</p> <p>11 he says.</p> <p>12 Q. In answer to my question before you --</p> <p>13 whether you considered it important or not, I'm not</p> <p>14 really asking that -- is that something that you</p> <p>15 were already aware of; that he had been out on a</p> <p>16 mental health issue before?</p> <p>17 A. I don't recall ever focusing on it or</p> <p>18 knowing it.</p> <p>19 I knew him and multiple other employees</p> <p>20 have had different times off.</p> <p>21 Q. Is it fair to say that mental health issues</p> <p>22 might be an explanation of someone acting in a</p> <p>23 paranoid way?</p> <p>24 MR. PERLMAN: Objection.</p>
<p style="text-align: right;">Page 62</p> <p>1 A. Alright.</p> <p>2 MR. PERLMAN: Can we take a quick</p> <p>3 break?</p> <p>4 MR. MULHEARN: Sure.</p> <p>5 Q. (By Mr. Mulhearn) Looking at Exhibit 11, is</p> <p>6 that something you received from Mr. Demmons?</p> <p>7 A. Yes.</p> <p>8 Q. Demmons was a supervisor that worked for</p> <p>9 you?</p> <p>10 A. Yes.</p> <p>11 Q. Was he also a supervisor that was</p> <p>12 supervising Mr. Pizzuto?</p> <p>13 A. Yes.</p> <p>14 Q. As you can see in the first sentence or two</p> <p>15 of that email, there's talk there about Pizzuto</p> <p>16 being out on worker's compensation for seven months</p> <p>17 due to various physical and mental health issues.</p> <p>18 See that?</p> <p>19 A. Yup.</p> <p>20 Q. Was that something that was news to you at</p> <p>21 this time; in other words, that he had been out of</p> <p>22 worker's compensation for physical and mental health</p> <p>23 issues?</p> <p>24 A. Again, it's something I was never -- I had</p>	<p style="text-align: right;">Page 64</p> <p>1 A. I don't remember.</p> <p>2 Q. This email was something that was sent to</p> <p>3 you by Demmons that led to the drug and alcohol</p> <p>4 testing of Mr. Pizzuto; correct?</p> <p>5 MR. PERLMAN: Objection.</p> <p>6 A. I would say -- again, let me make sure I've</p> <p>7 got my times here.</p> <p>8 This is something that focused again on</p> <p>9 this very specific threats being made to Chris. And</p> <p>10 there were threats made to Mike and threats made to</p> <p>11 me, and there was very loud and boisterous behavior.</p> <p>12 So taken as a whole, there's probably</p> <p>13 pieces of this that could have led to that and</p> <p>14 really focused around the threats and it just being</p> <p>15 really unsafe and knowing that this unsafe person</p> <p>16 was going to get in a truck.</p> <p>17 Q. I respect the answer. I'm really still</p> <p>18 focused on this point of just your knowledge at all</p> <p>19 that Pizzuto had had some mental health issues.</p> <p>20 Did you have any such knowledge?</p> <p>21 A. I don't recall any specific conversations</p> <p>22 about it at all.</p> <p>23 I mean, I see this email. I read it, so I</p> <p>24 know I got it, but it doesn't jump out at me.</p>

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<p>1 Q. Basically the way that Mr. Pizzuto</p> <p>2 responded to things said at the meeting led him to</p> <p>3 be terminated instead of going off on disability;</p> <p>4 correct?</p> <p>5 A. He didn't want to take our discipline.</p> <p>6 Q. Is it fair to say it was based on his</p> <p>7 response to what you said at that meeting you</p> <p>8 decided to terminate him --</p> <p>9 MR. PERLMAN: Objection.</p> <p>10 Q. (By Mr. Mulhearn) -- rather than just issue</p> <p>11 the written warnings?</p> <p>12 A. The warnings -- I had just cause to</p> <p>13 terminate him at that point, based on what I had at</p> <p>14 that morning.</p> <p>15 It just was beyond -- it was beyond a</p> <p>16 progression in discipline. It was, This is now a</p> <p>17 major, major safety, and I really felt that this</p> <p>18 could lead to a catastrophe.</p> <p>19 Q. Just a couple of questions about what you</p> <p>20 said here in the email.</p> <p>21 It is something where, at the bottom of the</p> <p>22 first page, he's asking you if you were telling him</p> <p>23 to punch out, because he's going to leave and go</p> <p>24 directly to the doctor.</p>	<p>1 A. No.</p> <p>2 MR. PERLMAN: Objection.</p> <p>3 A. You'd have to ask him. I just summarized a</p> <p>4 quote.</p> <p>5 Q. Does that make any sense to you then or</p> <p>6 now?</p> <p>7 A. No. I don't even recall him saying that at</p> <p>8 this thing. I'm sure he did. I wrote it.</p> <p>9 Q. So had you told him that you were going to</p> <p>10 put him out on FMLA?</p> <p>11 A. No.</p> <p>12 Q. You were telling him that you were firing</p> <p>13 him; correct?</p> <p>14 A. I told him he was terminated.</p> <p>15 Q. I'm showing you Exhibit 33, which appears</p> <p>16 to be the termination or discharge notice of July</p> <p>17 25, 2003.</p> <p>18 Is this something that was issued that day?</p> <p>19 A. Yes.</p> <p>20 Q. Was this something that had been prepared</p> <p>21 before that meeting that we've just been discussing?</p> <p>22 A. Probably minutes before.</p> <p>23 Q. This was ready to go if the meeting didn't</p> <p>24 go one way.</p>
Page 110	Page 112
<p>1 See that?</p> <p>2 It continues on the next page as well.</p> <p>3 A. What's the question?</p> <p>4 Q. Is this accurate as to what he was saying</p> <p>5 to you?</p> <p>6 A. If I wrote it in this summary, then that's</p> <p>7 what was summarized.</p> <p>8 Q. Let me go as to your understanding.</p> <p>9 A. That's what happened.</p> <p>10 Q. Your understanding was that he was saying</p> <p>11 he was going to leave, go to his doctor, get the</p> <p>12 doctor to get a note saying it was okay to come back</p> <p>13 to work.</p> <p>14 A. And I told him that he was fired. He was</p> <p>15 terminated.</p> <p>16 Q. That was your understanding of what he was</p> <p>17 saying to you; right?</p> <p>18 A. That's what he said. Yeah.</p> <p>19 Q. The next sentence, I don't understand what</p> <p>20 it means.</p> <p>21 It says, He then said he would be going on</p> <p>22 FMLA under stress.</p> <p>23 A. Right.</p> <p>24 Q. Did you understand what he was saying?</p>	<p>1 This was the other way; correct?</p> <p>2 A. My recollection is is that as soon as I was</p> <p>3 reported that he drove up on the dock that I had</p> <p>4 this drawn up.</p> <p>5 Q. I'll show you Exhibit 34. I want to ask</p> <p>6 you to look at Section 5 of this. It's a page from</p> <p>7 the contract.</p> <p>8 My question to you, before I ask anything</p> <p>9 else about this document, is whether he had any</p> <p>10 other options available to him at the time, other</p> <p>11 than what has been stated; termination or he goes</p> <p>12 off on a voluntary medical leave?</p> <p>13 Did you have the option, also, of putting</p> <p>14 him out involuntarily on a medical leave?</p> <p>15 A. I don't recall ever investigating that.</p> <p>16 Q. You don't recall if you had that option?</p> <p>17 A. Yeah. Again, my mindset at this particular</p> <p>18 point in time is that I have a bunch of people</p> <p>19 basically in fear of the threats.</p> <p>20 They had been threatened. I've been</p> <p>21 threatened. I'm getting ready to confront someone</p> <p>22 who I'm afraid of.</p> <p>23 There was a lot of things going through my</p> <p>24 mind. But it was more around how do I keep this</p>

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<p>1 situation so it doesn't escalate to a catastrophe</p> <p>2 and defuse it.</p> <p>3 Q. Understood.</p> <p>4 But this idea of a third option of putting</p> <p>5 him out involuntary on leave, not firing him but</p> <p>6 just putting him out on leave as a danger, that</p> <p>7 never occurred to you at the time?</p> <p>8 A. I don't recall ever thinking of that.</p> <p>9 Q. This Section 5 --</p> <p>10 A. What is this?</p> <p>11 Q. Article 51, Section 5 of the supplemental</p> <p>12 agreement.</p> <p>13 A. Let's call it a contract.</p> <p>14 Q. This is where it comes from.</p> <p>15 MR. PERLMAN: Let me see what</p> <p>16 the --</p> <p>17 A. Page 175.</p> <p>18 Q. Does it appear that there was the ability</p> <p>19 of Airborne to require an employee to have a medical</p> <p>20 exam reporting that he was unfit for duty?</p> <p>21 MR. PERLMAN: Objection. This</p> <p>22 only talks about being physically qualified.</p> <p>23 Q. (By Mr. Mulhearn) If you look at Section 5,</p> <p>24 Examinations, it talks about someone being</p>	<p>1 I don't know what's wrong with him. All I</p> <p>2 know is that I'm afraid, and all my supervisors were</p> <p>3 afraid. That's all that was on my mind.</p> <p>4 I wasn't thinking anything other than that.</p> <p>5 So the options were he was getting off the property.</p> <p>6 Q. Had you ever sent any employee for a</p> <p>7 fit-for-duty exam, involuntarily, to that?</p> <p>8 A. Specifically, I don't recall. I've heard</p> <p>9 of it.</p> <p>10 I was there 13 years. It was standard</p> <p>11 after, say, worker's comp that they would do that.</p> <p>12 Do I ever remember pulling someone off the</p> <p>13 line and doing it? No.</p> <p>14 Q. I'll show you Exhibit 35, which is another</p> <p>15 piece of the contract, Article 47, Discharge and</p> <p>16 Suspension.</p> <p>17 Are you generally familiar with this</p> <p>18 provision?</p> <p>19 A. Generally.</p> <p>20 Q. Is it fair to say, with regard to</p> <p>21 discharging an employee under the contract, that</p> <p>22 normally you had to get at least one warning notice</p> <p>23 or written warning with regard to the conduct, with</p> <p>24 some exceptions?</p>
Page 114	Page 116
<p>1 physically qualified to work, if a dispute develops</p> <p>2 there's a process of sending someone to an impartial</p> <p>3 doctor, et cetera.</p> <p>4 Did you know that you had an option, at</p> <p>5 least with regard to a physical inability to work,</p> <p>6 to do that?</p> <p>7 MR. PERLMAN: Objection.</p> <p>8 A. What I know that morning is that what I was</p> <p>9 mainly focused on was him being off my property to</p> <p>10 defuse a catastrophe here.</p> <p>11 Again, my focus is purely on him</p> <p>12 threatening me, threatening my supervisors, being</p> <p>13 loud, boisterous, and really behaving badly.</p> <p>14 And I did not want that to escalate to</p> <p>15 something that I couldn't turn the clock back on.</p> <p>16 So my strategy was to get him off the property in a</p> <p>17 very nonconfrontational matter, if possible,</p> <p>18 because, guess what, we're all afraid of this guy.</p> <p>19 And we're sitting in an environment just</p> <p>20 like this, and he's sitting there, and I'm going to</p> <p>21 be the one to tell him that he's terminated.</p> <p>22 And what's going through my mind is if I</p> <p>23 have an option, before that, it would be, The union</p> <p>24 can defuse this, I will use that option.</p>	<p>1 A. Every situation is different. Every</p> <p>2 situation is different.</p> <p>3 There's a progression in some situations;</p> <p>4 other situations, it's just.</p> <p>5 Q. Can you tell me how you complied with</p> <p>6 Article 47 in discharging Pizzuto on July 25?</p> <p>7 A. I probably added one extra step in here</p> <p>8 that I didn't need to because of that morning; an</p> <p>9 incident where it really escalated to a whole new</p> <p>10 level of people looking for exit routes. And now</p> <p>11 I'm really saying, You know what, this could be a</p> <p>12 real possibility.</p> <p>13 I could have done that -- I could have</p> <p>14 moved at this stage right to termination. I had a</p> <p>15 warning already set up from the day before, so we</p> <p>16 issued them both that day.</p> <p>17 But the whole idea at this stage, at this</p> <p>18 time in the morning, was that he was leaving the</p> <p>19 building.</p> <p>20 Q. Just under the technicalities of it -- I</p> <p>21 know the substance you already described -- but</p> <p>22 technically speaking, under this Article 47, he</p> <p>23 needed to be given a written warning for the conduct</p> <p>24 he was let go for before you could let him go;</p>

<p style="text-align: right;">Page 117</p> <p>1 correct?</p> <p>2 A. That's not correct, actually.</p> <p>3 I had just cause the minute I really felt</p> <p>4 that this person was -- I felt at that stage, that</p> <p>5 morning, that this person was a real threat. And I</p> <p>6 wanted to prevent a catastrophe, that I need him out</p> <p>7 of here.</p> <p>8 So, yes, you know, I have just cause. I</p> <p>9 didn't need a warning.</p> <p>10 Q. This particular provision does require the</p> <p>11 warning and puts forth some very specific --</p> <p>12 A. This is very general. It covers a lot of</p> <p>13 different things from --</p> <p>14 Q. Sure.</p> <p>15 But it gives very specific exceptions where</p> <p>16 you can discharge someone without that warning if</p> <p>17 there's dishonesty, drunkenness, recklessness that</p> <p>18 results in a serious accident or carrying</p> <p>19 unauthorized passengers and two other examples that</p> <p>20 are specifically listed.</p> <p>21 The question to you is: Is it true that</p> <p>22 none of those applied?</p> <p>23 A. They are not written in there.</p> <p>24 Q. Is it fair to say that you believed you had</p>	<p style="text-align: right;">Page 119</p> <p>1 Q. Let me show you Exhibit No. 38.</p> <p>2 MR. MULHEARN: For the record, it</p> <p>3 is an October 28, 2002 memo to Mr. Pizzuto from</p> <p>4 Labor Relations confirming his medical or Family</p> <p>5 Medical Leave being allowed.</p> <p>6 I'll note for the record it's cc'd to S.</p> <p>7 Crossken.</p> <p>8 Q. (By Mr. Mulhearn) Is this something you</p> <p>9 received yourself, too?</p> <p>10 A. I don't recall seeing that.</p> <p>11 Q. Is it typical for the district manager to</p> <p>12 get a copy of the FMLA confirmation when someone</p> <p>13 goes on?</p> <p>14 A. It's typical that this confirmation would</p> <p>15 come in and, more than likely, my admin would have</p> <p>16 received that.</p> <p>17 Q. Operations does get a copy of the FMLA</p> <p>18 confirmation?</p> <p>19 MR. PERLMAN: Objection.</p> <p>20 A. Yes.</p> <p>21 Q. You are, if they are approved on leave?</p> <p>22 A. Yeah. I don't recall if it goes to us or</p> <p>23 Labor Relations.</p> <p>24 Q. Last, but not least, Exhibit 39.</p>
<p style="text-align: right;">Page 118</p> <p>1 the right to fire for just cause or terminate for</p> <p>2 just cause regardless of any prior written warning?</p> <p>3 A. Yeah. I felt that this was a huge safety</p> <p>4 issue that needed to be addressed.</p> <p>5 Q. I'll show you Exhibit 36.</p> <p>6 MR. MULHEARN: For the record, it</p> <p>7 is a packet of information sent by Mr. Pizzuto to</p> <p>8 Steve Crossken.</p> <p>9 Q. (By Mr. Mulhearn) I'll note there in the</p> <p>10 exhibit there's attached an FMLA and medical</p> <p>11 information.</p> <p>12 Do you see that?</p> <p>13 A. Yup.</p> <p>14 Q. Was this something that you yourself ever</p> <p>15 received?</p> <p>16 A. This was to Steve Crossken.</p> <p>17 Q. But did you ever receive it yourself?</p> <p>18 A. I don't recall seeing it.</p> <p>19 Q. Let me show you Exhibit 37, which is the</p> <p>20 underlying FMLA paperwork that's part of the</p> <p>21 previous exhibit.</p> <p>22 Did you ever see this?</p> <p>23 A. I don't recall it. I imagine these are all</p> <p>24 in his file.</p>	<p style="text-align: right;">Page 120</p> <p>1 MR. MULHEARN: For the record,</p> <p>2 this is a series of copies of photographs of an</p> <p>3 individual, which appears to be Mr. Pizzuto.</p> <p>4 Have you seen these photographs before?</p> <p>5 A. I can't make out these photographs, but I</p> <p>6 know it was him.</p> <p>7 Q. After he was let go, did he picket in front</p> <p>8 of the facility?</p> <p>9 A. There were days he would show up. Yes.</p> <p>10 Q. Does this appear to be pictures of that</p> <p>11 activity?</p> <p>12 A. That's what it looks like.</p> <p>13 Q. Do you know how long he did that for?</p> <p>14 A. I don't recall. I know we hired a security</p> <p>15 guard on the days he did it.</p> <p>16 Q. It was just him out there?</p> <p>17 A. Again, I would drive by, but I was not</p> <p>18 looking at him or insighting him.</p> <p>19 MR. MULHEARN: I have no further</p> <p>20 questions.</p> <p>21 MR. PERLMAN: And I have no</p> <p>22 questions.</p> <p>23 (Whereupon the deposition was</p> <p>24 concluded at 1:22 p.m.)</p>

COMPRESSED COPY

1 UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF MASSACHUSETTS
 3 - - - - -x
 4 PAUL PIZZUTO, :
 5 Plaintiff, :
 6 vs. : Civil Action
 7 CROSSKEN EXPRESS, INC., : No. 04-12492 GAO
 8 STEVEN CROSSKEN, JOSEPH :
 9 HAMILTON, GREG SWEATT, :
 10 and ARTHUR LEVERIS, :
 11 Defendants. :

COPY

12 - - - - -x
 13 Raleigh, North Carolina
 14 Thursday, June 28, 2007

15 TELEPHONIC DEPOSITION OF CHRISTOPHER
 16 MICHAEL DEMMONS, a witness herein, by counsel for
 17 the Defendants in the above-entitled matter,
 18 pursuant to notice, the witness being duly sworn
 19 by VIRGINIA E. LEWIS, a Notary Public in and for
 20 the State of North Carolina, taken at Your
 21 Office USA, 2501 Blue Ridge Road, Raleigh, North
 22 Carolina, at 1:00 p.m., on Thursday, June 28,
 23 2007, and the proceedings being taken down by
 24 Stenotype by VIRGINIA E. LEWIS, and transcribed
 25 under her direction.

Exhibit 26

<p style="text-align: right;">62</p> <p>1 lay person might?</p> <p>2 A. No, negative. You know, bottom line is</p> <p>3 it didn't matter if it was me as an ex-military</p> <p>4 manager or a civilian manager. Insubordination</p> <p>5 is insubordination. Stepping toe to toe with</p> <p>6 your boss, threatening him physically, I don't</p> <p>7 know, I don't care where you're from. A threat's</p> <p>8 a threat.</p> <p>9 Q. And when you say "major disruptive force</p> <p>10 in the workplace," what did you mean?</p> <p>11 A. Day to day, you've got a job to do.</p> <p>12 We've got to sort freight, we've got to get it</p> <p>13 out to customers, make level of service. So</p> <p>14 disruptive from the fact of, you know, trying to</p> <p>15 get the job done. I've got other drivers to</p> <p>16 manage besides Paul Pizzuto, going back to my 90</p> <p>17 percent, 10 percent analogy. You know, it's a</p> <p>18 business. You've got to come in there with a</p> <p>19 solid work ethic, take a little pride in your</p> <p>20 job, get the work done, go to the house.</p> <p>21 Q. Right. And it is your testimony that you</p> <p>22 have absolutely no recollection of Pizzuto's drug</p> <p>23 and alcohol test on July 16, 2003?</p> <p>24 MR. PERLMAN: Objection; asked and</p> <p>25 answered.</p>	<p style="text-align: right;">64</p> <p>1 Q. Did you have any conversations with</p> <p>2 Mr. Hamilton with regard to your concerns about</p> <p>3 Pizzuto's mental health?</p> <p>4 A. Do not recollect any. We had</p> <p>5 conversations references job performance.</p> <p>6 Q. Do you remember -- strike that.</p> <p>7 You mentioned that you were there on the</p> <p>8 day that Pizzuto was fired, right?</p> <p>9 A. I believe so.</p> <p>10 Q. And do you remember where you were</p> <p>11 compared to -- I mean, where were you physically</p> <p>12 at the time that he drove into the station?</p> <p>13 A. The North Shore belt, which is the belt</p> <p>14 closest to the entryway where you could drive a</p> <p>15 vehicle up from the outside parking lot. When he</p> <p>16 stopped his privately owned vehicle, he was</p> <p>17 probably no more than 15, 20 feet from me.</p> <p>18 Q. And you say that you had fear for your</p> <p>19 physical safety at that time?</p> <p>20 A. Yes, I did.</p> <p>21 Q. And you described it before. You said</p> <p>22 you thought he was going to go postal, come out</p> <p>23 shooting, words to that effect?</p> <p>24 A. Yeah, sure.</p> <p>25 Q. And what made you think that he was going</p>
<p style="text-align: right;">63</p> <p>1 You can answer.</p> <p>2 A. Yeah. Yeah, no recollection.</p> <p>3 Q. All right. And you have no recollection</p> <p>4 of him having any conversation with you on that</p> <p>5 day?</p> <p>6 A. No, no recollection.</p> <p>7 Q. Do you remember him saying something to</p> <p>8 you to the effect the police will get you?</p> <p>9 A. I just remember him stepping toe to toe</p> <p>10 to me, and him looking at me and threatening. I</p> <p>11 don't remember him saying anything about the</p> <p>12 police are going to get me.</p> <p>13 Q. All right. Do you remember Jim O'Brien?</p> <p>14 A. Yeah, I know Jim O'Brien. He used to be</p> <p>15 one of my drivers as well.</p> <p>16 Q. All right. And was he not often a union</p> <p>17 rep as well?</p> <p>18 A. No, he wasn't a union rep.</p> <p>19 Q. All right. Do you remember Michael Ray?</p> <p>20 A. Yes, I know Michael Ray.</p> <p>21 Q. Do you remember Jim O'Brien and Michael</p> <p>22 Ray coming up to you or approaching you asking</p> <p>23 you why, or what the probable suspicion was for</p> <p>24 Pizzuto's drug and alcohol test?</p> <p>25 A. No, I don't recollect that.</p>	<p style="text-align: right;">65</p> <p>1 to come out shooting?</p> <p>2 A. Once again, going back to the original</p> <p>3 statement we were talking about, he had</p> <p>4 manifested a lot of anger and rage issues. When</p> <p>5 I see a car screaming at a high rate of speed</p> <p>6 into the facility within about 15 or 20 feet of</p> <p>7 my proximity, I get a little concerned.</p> <p>8 Q. And how fast do you think he was going?</p> <p>9 A. I couldn't even venture a guess. I'd --</p> <p>10 I'd -- I'd say when you're pulling vehicles out</p> <p>11 of there, you're going less than under five miles</p> <p>12 an hour. He had to be a good ten miles plus over</p> <p>13 that.</p> <p>14 Q. And did you see him get out of the car?</p> <p>15 A. Yes, I did.</p> <p>16 Q. And what did you see at that time?</p> <p>17 A. I believe he got out. We all were</p> <p>18 sitting there, jaws dropped to the ground. He</p> <p>19 went in, and he punched in.</p> <p>20 Q. And then what did he do?</p> <p>21 A. What did he do?</p> <p>22 Q. Yes.</p> <p>23 A. You know, I haven't got a clue. I think</p> <p>24 he got in his car and drove out. I know what I</p> <p>25 did. I went back, took care of my -- supervised</p>

<p style="text-align: right;">66</p> <p>1 my guys, and turned it over to the two IC of the 2 building to adjudicate. 3 Q. Right. So you told Hamilton about this? 4 A. I believe, I want to say it was Leveris 5 out there; and him, as he's second in command for 6 the station, I let him deal with it. I had 7 enough of dealing with it. 8 Q. All right. Were you ever asked to 9 prepare a statement with regard to what you saw? 10 A. You know, honestly, I think that day I 11 went out on the road. So I might have introduced 12 a statement, I'm not even sure. I don't 13 recollect. I know there was other managers 14 present during this, and they were going to 15 handle it. 16 Q. All right. Now, this incident took place 17 at the beginning of the shift, did it not? 18 A. Yes, it did. 19 Q. And were you aware that there was at 20 least a -- somewhat of a practice at that station 21 that if employees were running late that they 22 might drive up, punch in before they parked their 23 cars? 24 A. I've never seen that before. When they 25 drive up, they drive up, park outside the ramp</p>	<p style="text-align: right;">68</p> <p>1 Q. If freight was being stolen? 2 A. I mean, it wasn't freight being stolen. 3 It was freight being stolen from the company, not 4 from the drivers. 5 Q. Okay. But didn't Mr. Pizzuto report to 6 you that he thought someone was stealing his 7 freight? 8 A. Yeah, when he was out on the road. 9 Q. That was in your memo, right? 10 A. Yeah. When he was out on the road, he 11 thought he was being followed and somebody was 12 stealing his freight while he was out on the road 13 out doing his route in Andover, Massachusetts. 14 Q. All right. Just to be straight with you, 15 I mean, if somebody was concerned about theft or 16 freight being stolen, that would be a legitimate 17 concern, but you didn't believe Pizzuto's claim 18 of theft? 19 MR. PERLMAN: Objection. 20 Q. Would you buy into that? 21 A. No. 22 Q. All right. So what was it about Pizzuto 23 that -- where you said if his freight was being 24 stolen that didn't raise a concern with you? 25 A. I'd been out with him on the road before,</p>
<p style="text-align: right;">67</p> <p>1 outside the building, walk up and punch in. I've 2 never seen a driver drive his POV up to the time 3 clock to punch in. 4 Q. At the time in like July 2003 time frame, 5 wasn't there an ongoing investigation at that 6 station with regard to employees -- well, 7 suspected to be employee theft? 8 A. Could have been. 9 Q. Do you remember that specifically? 10 A. There was always an ongoing examination 11 of loss prevention issues in that building. 12 Q. You don't remember any particular 13 investigation going on? 14 A. Like I said, there was an ongoing 15 investigation probably from the time I set foot 16 in that building till the time I left. 17 Q. All right. So if a driver were concerned 18 that freight were being stolen from his truck, 19 that would be a legitimate concern, wouldn't it? 20 MR. PERLMAN: Objection. 21 MR. PERLMAN: You can answer if you 22 understand the question. 23 THE WITNESS: Yeah, I understand the 24 question. 25 A. I don't think it's a legitimate concern.</p>	<p style="text-align: right;">69</p> <p>1 watched his habits, watched how he conducted his 2 business. And I was trying to figure out where 3 in the world, number one, we as the management 4 team were -- were somehow surreptitiously 5 pursuing him and, number two, taking freight off 6 his truck. That's what it was directed at, the 7 management team within the building. We were 8 stealing the freight off his truck. 9 Q. All right. So you discounted his 10 allegation? 11 A. I think I just explained myself. 12 Q. Well, you didn't believe him, did you? 13 A. What's that? 14 Q. You didn't believe someone was stealing 15 his freight, did you? 16 A. No, I didn't believe him. I went out on 17 the road with him to check to see if we were 18 doing something where the locks on his trucks 19 were failing or if he was doing something 20 procedurally; i.e., leaving his truck open when 21 he went to make deliveries that could facilitate 22 any freight being stolen from him. 23 Q. And you thought he was delusional, 24 correct? 25 A. No.</p>

Exhibits 86-88

Volume 1, Pages 1-95

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 04-12492-GAO

PAUL PIZZUTO

Plaintiff

v.

CROSSKEN EXPRESS, INC.

STEVEN CROSSKEN

JOSEPH HAMILTON

GREGORY SWEATT

ARTHUR LEVERIS

DEPOSITION of GREGORY J. SWEATT

Thursday, July 19, 2007, 10:42 a.m. to 1:08 p.m.

Sullivan, Weinstein & McQuay, PC

Two Park Plaza, Suite 610

Boston, Massachusetts

-----JONATHAN H. YOUNG, RDR/CRR-----

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Exhibit 27

Gregory J. Sweatt
Volume 1 - July 19, 2007

19 (Pages 70 to 73)

70	<p>1 A. Yes.</p> <p>2 Q. And the end of the ramp puts you inside the</p> <p>3 building?</p> <p>4 A. Yes. There's a dock door right here that</p> <p>5 closes. The ramp is outside, and then the door</p> <p>6 closes, and then inside here you'd call that the</p> <p>7 dock too.</p> <p>8 Q. Now, at the top of the page of Exhibit 88</p> <p>9 you have sort of an oblong figure there. Are those</p> <p>10 the belts?</p> <p>11 A. Yes. That's the belt where the freight</p> <p>12 goes down.</p> <p>13 Q. Could you write the word Belts in there?</p> <p>14 And then, on the diagram you have to the</p> <p>15 right of the ramp an area with a yellow TC in a box,</p> <p>16 right?</p> <p>17 A. Time Clock.</p> <p>18 Q. Can you put the letter A there in a big</p> <p>19 circle?</p> <p>20 A. Yes.</p> <p>21 Q. Now, the area A is the area of the time</p> <p>22 clock?</p> <p>23 A. Yes.</p> <p>24 Q. Can you show us, without marking yet, on</p>	72	<p>1 A. Come around.</p> <p>2 Q. The front of the building?</p> <p>3 A. The front of the building. You'd have to</p> <p>4 come down around the front of the building and then</p> <p>5 turn the corner.</p> <p>6 Q. And when you were at Location B, you heard</p> <p>7 what?</p> <p>8 A. I heard a car coming around the corner, and</p> <p>9 I took a look.</p> <p>10 Q. And what did you see?</p> <p>11 A. I saw Paul Pizzuto's red Volkswagen with</p> <p>12 him driving in it coming up the ramp.</p> <p>13 Q. Did you know his car?</p> <p>14 A. Yes.</p> <p>15 Q. And can you put a C where you think that</p> <p>16 vehicle was when you first saw it?</p> <p>17 A. I guess I should have draw it bigger.</p> <p>18 Q. You can put a C with an arrow down.</p> <p>19 A. Somewhere down there.</p> <p>20 Q. And at that time his vehicle was coming</p> <p>21 around the building?</p> <p>22 A. Yes.</p> <p>23 Q. And what did you see right after that?</p> <p>24 A. It came around the corner. I looked and</p>
71	<p>1 Exhibit 88 where you were at the time stated in</p> <p>2 Exhibit 30 when you were walking on the dock when</p> <p>3 you first observed this car?</p> <p>4 A. Right here.</p> <p>5 Q. So can you put a B in a circle?</p> <p>6 The B location is where you were when</p> <p>7 you heard a car coming up the ramp?</p> <p>8 A. That's when I looked; because I heard a car</p> <p>9 coming around the corner, and that's when I looked.</p> <p>10 I was right there.</p> <p>11 Q. Now, when you say around the corner, that</p> <p>12 means what?</p> <p>13 A. Well, I don't want to draw on that.</p> <p>14 I don't know if I'm allowed to or not.</p> <p>15 Well, the building, the corner of the</p> <p>16 building, if I kept drawing it, I guess the building</p> <p>17 goes like this, really; you know what I'm saying?</p> <p>18 Q. Can you put another line where the building</p> <p>19 might be ending?</p> <p>20 A. Yes. It's probably actually beyond, like</p> <p>21 more down here, I'd say.</p> <p>22 Q. All right.</p> <p>23 So to come up the ramp, a vehicle would</p> <p>24 have to...</p>	73	<p>1 saw it was his car and him, and he drove right into</p> <p>2 the building.</p> <p>3 When I saw him, I moved out of the way.</p> <p>4 I got out of the way.</p> <p>5 Q. Now, did you make any observations at that</p> <p>6 time as to how fast he was going?</p> <p>7 A. Yes. I thought he was going pretty fast</p> <p>8 coming around the corner; a lot faster than I would</p> <p>9 have been. There's a lot of people that walk in</p> <p>10 this area.</p> <p>11 Q. Can you estimate in miles per hour how fast</p> <p>12 he was going?</p> <p>13 A. No, not really.</p> <p>14 Q. Were the tires squealing or anything like</p> <p>15 that?</p> <p>16 A. I don't remember that.</p> <p>17 Q. Did he look like he was going too fast?</p> <p>18 A. I thought it was too fast.</p> <p>19 Q. And from the point where you saw him to</p> <p>20 where you were, how far was that, approximately?</p> <p>21 A. I don't know. From inside there to the</p> <p>22 corner of the building, probably 50 yards maybe,</p> <p>23 40 yards, maybe a hundred or so feet.</p> <p>24 Q. Did you continue to walk from Point B to</p>

Gregory J. Sweatt
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20 (Pages 74 to 77)

<p style="text-align: right;">74</p> <p>1 some other point?</p> <p>2 A. Yes. I moved over here to this dock,</p> <p>3 because there was a truck parked there.</p> <p>4 Q. And did you stop there?</p> <p>5 A. Yes. I went over here and kind of...</p> <p>6 Q. Can you put a D where you stopped?</p> <p>7 A. I want to say I'm like this, like that.</p> <p>8 Q. That's your best recollection of about</p> <p>9 where you were when you stopped; correct?</p> <p>10 A. Yes.</p> <p>11 Q. And what happened with Paul Pizzuto in the</p> <p>12 meantime towards Points B and D?</p> <p>13 A. Well, I wouldn't say I ran, but I moved</p> <p>14 very fast.</p> <p>15 And I went over to here; and then I</p> <p>16 observed him drive into the building, and then he</p> <p>17 jumped out of his car very quickly.</p> <p>18 And I just was kind of looking over</p> <p>19 there keeping an eye on him to see what was going</p> <p>20 to happen; and then he went around the corner, and</p> <p>21 I would assume he scanned in the time card.</p> <p>22 And then he went back, got in his car,</p> <p>23 and then backed out kind of fast, backed down the</p> <p>24 ramp and disappeared.</p>	<p style="text-align: right;">76</p> <p>1 to the point that he stopped his car?</p> <p>2 A. He come around the corner fast, high rate</p> <p>3 of speed, drove up the ramp and went right into the</p> <p>4 building.</p> <p>5 To me, that's not a common thing.</p> <p>6 Nobody in my mind does that. I've seen people</p> <p>7 drive their vehicles up to here or onto the edge</p> <p>8 of the ramp, or even just on the ramp a little bit,</p> <p>9 and stop and park and get out and run inside to scan</p> <p>10 in and then run back out and get in their car and</p> <p>11 leave; but I have not had anybody actually come</p> <p>12 flying right into the building.</p> <p>13 I was concerned about my own safety, but</p> <p>14 at the same time I was thinking what if someone was</p> <p>15 walking around the corner too.</p> <p>16 After I thought about it, he could have</p> <p>17 hit somebody too. That wasn't a very smart thing</p> <p>18 to do.</p> <p>19 Q. This is an area where other vehicles are in</p> <p>20 and out; correct?</p> <p>21 A. Trucks, yes.</p> <p>22 Q. Trucks?</p> <p>23 A. Yes. That's what the ramp is for.</p> <p>24 Q. And when he stopped the car, did he stop</p>
<p style="text-align: right;">75</p> <p>1 And when he pulled out, I came back over</p> <p>2 like to here, to kind of look to see that he went</p> <p>3 away.</p> <p>4 Q. Can you draw a little vehicle, or a box or</p> <p>5 something representing a vehicle, as to where</p> <p>6 Pizzuto pulled up to?</p> <p>7 A. Where he stopped?</p> <p>8 Q. Where he stopped</p> <p>9 A. I'd say like right in this area here.</p> <p>10 Q. Put a little E inside a circle there.</p> <p>11 So E is where you think he finally</p> <p>12 stopped before getting out of the car; correct?</p> <p>13 A. Yes.</p> <p>14 Q. Now, up to that point was there something</p> <p>15 about that incident that caused concern to you?</p> <p>16 A. Well, yes. Prior to this I had had him</p> <p>17 make threatening remarks; and when he came around</p> <p>18 the corner driving in at a high rate of speed, I</p> <p>19 thought, I don't know, maybe today is the day,</p> <p>20 or something was going to happen bad.</p> <p>21 I just felt like, I don't know, maybe</p> <p>22 he's going to get out with a gun and start shooting</p> <p>23 people. I don't know.</p> <p>24 Q. What was it about what he did that day up</p>	<p style="text-align: right;">77</p> <p>1 short? Did he leave like marks?</p> <p>2 A. Right. There wasn't like a skid mark on</p> <p>3 the pavement that I remember seeing there. He just</p> <p>4 came up the ramp and the car stopped and he popped</p> <p>5 the door out, jumped out real quick; and I was just</p> <p>6 kind of like looking over there, like I don't know</p> <p>7 what to expect.</p> <p>8 I was kind of thinking, if he's</p> <p>9 getting out and he's going to do some bodily harm,</p> <p>10 I'm thinking about how am I going to get out.</p> <p>11 There was a tractor-trailer parked</p> <p>12 here that was empty, so I was kind of at a dead</p> <p>13 end myself. I was in my mind out of the way; but</p> <p>14 if he went over here I was kind of contemplating,</p> <p>15 well, where am I going next.</p> <p>16 Q. Now, according to Exhibit 30, you say there</p> <p>17 that he first thought he was planning on jumping out</p> <p>18 of his car and starting shooting?</p> <p>19 A. That's the first thing that came to my</p> <p>20 mind, when I see him come around the corner; jeez,</p> <p>21 he's going to jump out and start shooting.</p> <p>22 Q. And what led you to that conclusion?</p> <p>23 A. Prior threats that he's made against us.</p> <p>24 I don't know; you watch the news and you</p>

Gregory J. Sweatt
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21 (Pages 78 to 81)

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1 see it happen, you know. For whatever reason,
2 workplace violence does exist, unfortunately.
3 Q. Is it fair to say that there was something
4 about your interactions with Pizzuto before this
5 that led you to jump to the conclusion that he
6 was going to come out and start shooting?
7 A. Yes.
8 Q. That you were in danger?
9 A. Yes.
10 Q. And what was that something?
11 A. Instances of altercations where he's
12 making threats to me to say You're going to get
13 it, You guys are going to get yours, to that effect.
14 Just having been there for a couple months, and just
15 having observed his behavior.
16 Q. And did you look for some sort of cover at
17 that time?
18 A. I did. That's when I was over here. I was
19 looking for someplace that would afford me
20 protection.
21 Q. And was there any other supervisor in the
22 area at the time?
23 A. At the moment when it happened, I had just
24 come out of here, and I didn't see anybody.

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1 I wasn't aware. I thought at that
2 moment it was just me. I had been in here to get
3 something, come out, walk across, seen the car and
4 ran to get some cover, and that was it.
5 Q. What actually happened, though, was Pizzuto
6 got out, punched in, went back down the ramp and
7 parked; right?
8 A. Yes.
9 Q. He didn't start shooting, did he?
10 A. No.
11 Q. Did you consider that you overreacted?
12 A. No. Not considering his threats towards
13 myself, I don't think so. I'm just concerned about
14 my own behavior.
15 Like I've said, I've worked here five
16 years, and I hadn't had anybody make those kinds of
17 threats toward me.
18 Q. But more specifically, on this occasion you
19 were wrong when you thought he was going to get out
20 of the car and start shooting?
21 A. Obviously I was wrong, because he didn't.
22 Q. He was punching in?
23 A. Obviously. He punched in.
24 Q. And you referred to before that drivers

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1 have punched in before parking their car on prior
2 occasions; correct?
3 A. I've seen people that have driven over here
4 and parked, but in my mind it was at the foot of the
5 ramp. I don't remember seeing anybody drive into
6 the building.
7 I've seen them park on the ramp,
8 like drive up and pull over to the side; because
9 they would realize that this is a working dock area.
10 Vehicles were coming in from the
11 airport that have to park here, they have to get
12 in there; they don't want to be parking in a way
13 that's going to block the dock off.
14 These trucks aren't leaving, but there
15 are people that are going to come from the airport
16 that are going to drive in with a DHL vehicle.
17 They just pull over to the side. That was
18 the purpose of it.
19 MS. EISENBERG: Can I ask that the
20 record reflect that the area that Mr. Sweatt is
21 pointing to where he has seen other people drive
22 up and park falls outside the doorway, outside the
23 building area?
24 MR. MULHEARN: Fine.

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1 Q. Why don't you draw a little box and put an
2 F in it as to the furthest you've seen a car drive
3 up before that to punch in like that.
4 Okay; and what you've just drawn is
5 somewhere on the ramp toward the lower part?
6 A. Yes.
7 Q. So Pizzuto drives up, as you say, goes
8 out, goes toward the time clock, gets back in his
9 vehicle, and backs out and goes to park; correct?
10 A. Yes.
11 Q. Do you remember that there was laughter in
12 the vicinity when this was occurring?
13 A. No, because there weren't like 10 or 20
14 guys standing here.
15 I think there might have been like
16 one or two people, because there is an operation
17 of something, a sorting operation goes on over here,
18 and there were a few people working there.
19 I don't remember sitting there laughing
20 about anything, to tell you the truth.
21 Q. You remember there may have been someone in
22 the vicinity?
23 A. I think there might have been, because
24 there were people over here at their vehicles.

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Exhibits: 89-97

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PAUL PIZZUTO

Plaintiff

vs.

Docket No. 04-12492 GAO

CROSSKEN EXPRESS, INC., STEVEN

CROSSKEN, JOSEPH HAMILTON, GREG

SWEATT, AND ARTHUR LEVERIS

Defendants

DEPOSITION OF CLAUDIA TROMBLY, M.D.

Wednesday, July 25, 2007, 1:02 p.m.

Happy 'n' Healthy Family Practice

7 Stiles Road

Salem, New Hampshire

----- Reporter: David Arsenault, RPR -----

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Exhibit 28

Claudia Trombly, M.D. - July 25, 2007

3 (Pages 6 to 9)

<p>1 Q. Prior to your current practice here at 2 Happy 'n' Healthy, did you practice anywhere else? 3 A. I practiced at Salem Family Practice, which 4 used to be in this building, for a year and a half. 5 Before that I worked at the Greater Lawrence Family 6 Health Center in Lawrence, Massachusetts. The year 7 before that I lived in Romania and did work with 8 orphans through a Christian mission. The year 9 before that I was working at Boston Medical Center 10 going out to homeless sites taking care of homeless 11 women and children for three years. That was my 12 very first job. 13 Q. How long have you been practicing? 14 A. About ten years. 15 Q. You mentioned that you had been at Salem 16 Family Practice. Were you practicing with Dr. Chang 17 at that time? 18 A. Yes. 19 Q. Did you take over Mr. Pizzuto's care from 20 Dr. Chang? 21 A. Yes. 22 Q. So would it be correct to say that 23 Dr. Chang was his primary care physician and then 24 you became his primary care physician?</p>	<p>1 at any hospitals? 2 A. Yes, affiliated with Holy Family, Lawrence 3 General and the Elliot. 4 Q. Where is the Elliot? 5 A. It is up in Exeter. I don't actually 6 physically go there. If I have a patient that's 7 that far up in New Hampshire, I have to have an 8 affiliation for them to go to. I don't physically 9 admit there. 10 Q. By Holy Family, you mean Holy Family in 11 Methuen? 12 A. Yes, that's my main hospital that I go to. 13 MS. EISENBERG: For the record, I'm 14 going to ask this be put into evidence. This is a 15 copy of the subpoena that was served on you. 16 (Marked, Exhibit 89, subpoena.) 17 Q. I am going to give you a set of documents 18 and ask you if you recognize them, if you wouldn't 19 mind just taking a look at those. 20 A. Yes, I do recognize these. 21 (Marked, Exhibit 90, records.) 22 Q. Can you tell me what these are? The top 23 page is marked MED 00115 at the bottom. 24 A. This is from Holy Family Hospital Medical</p>
<p>1 A. Yes. When Dr. Chang left the Salem Family 2 Practice, he handed Mr. Pizzuto's care to me. 3 Q. Do you remember when that was? 4 A. It was April of 2003. Actually, the exact 5 date I have here is 6/17/2003. We just found his 6 old Salem Family Practice record. I asked my office 7 manager to look in our archives, because this was 8 coming up. She actually handed it to me on Monday, 9 I believe. If you guys need copies of any of this 10 stuff, you can have it. There are some things from 11 Dr. Chang that are handwritten and signed. So this 12 is new information for you guys right now. I 13 apologize. 14 Q. I appreciate it. Forgive me, I have to 15 ask; I'm just doing my job here. Have you ever been 16 suspended? 17 A. No. 18 Q. Subject to any license revocations? 19 A. No. 20 Q. Application denials? 21 A. No. 22 Q. Ever been a party to a malpractice suit? 23 A. No. 24 Q. In your current practice are you on staff</p>	<p>1 Center from their emergency room. This is the 2 discharge paper given to someone with the diagnosis 3 and where someone is referred to follow up after an 4 emergency room visit. 5 Q. You mentioned a few minutes ago that you 6 started seeing Mr. Pizzuto in April of '03, correct? 7 A. When Dr. Chang left. It was June when 8 Dr. Chang left Salem Family Practice. I had started 9 my practice down the road. He gave a lot of his 10 patients to me to follow. 11 Q. So had you already seen Mr. Pizzuto prior 12 to this emergency room visit? 13 A. I don't believe so. I don't believe I did. 14 I think Dr. Chang was the only one who saw him. 15 Yeah. I had never met him before. 16 Q. So as of July 25, '03, you had not actually 17 met him in person? 18 A. Correct. 19 Q. So who would have entered this information 20 on this top page here where it says, for example, 21 patient was treated in the emergency department 22 blah-blah-blah for depression? 23 A. This was at the hospital. Dr. Ronald 24 Teitler, the treating provider, was the one in the</p>

Claudia Trombly, M.D. - July 25, 2007

16 (Pages 58 to 61)

<p style="text-align: right;">58</p> <p>1 A. I believe it was the last note, I guess</p> <p>2 August of -- I don't remember. I don't know.</p> <p>3 Q. If you look at Exhibit 93, which is your</p> <p>4 compilation of notes, would that help?</p> <p>5 A. August 10 of '06.</p> <p>6 Q. Now, is it fair to say that throughout that</p> <p>7 time that Mr. Pizzuto had given a history of having</p> <p>8 some mental issues?</p> <p>9 A. Yes.</p> <p>10 Q. And is it fair to say that initially you</p> <p>11 described those issues as being depression and</p> <p>12 anxiety?</p> <p>13 A. Yes.</p> <p>14 Q. And at some point in time he was diagnosed</p> <p>15 with bipolar, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know what doctor made that</p> <p>18 diagnosis?</p> <p>19 A. I would say the official person who made</p> <p>20 that diagnosis was Dr. Bob Moverman.</p> <p>21 Q. And he's the clinical psychologist?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know whether Dr. Sadowski, the</p> <p>24 psychiatrist, agreed with that diagnosis?</p>	<p style="text-align: right;">60</p> <p>1 a suspicion, especially because he was weaning</p> <p>2 himself off of medicines without his counselor and</p> <p>3 his psychiatrist being involved at one point. That</p> <p>4 is very typical of bipolar.</p> <p>5 Q. Beyond that, was there any difference in</p> <p>6 the symptoms of mental health that he was reporting</p> <p>7 to you from June of 2003 until last year?</p> <p>8 A. The difference in the symptoms, as his</p> <p>9 illness got worse, were the fear of going out, the</p> <p>10 paranoid thoughts. Those really were indications</p> <p>11 that his condition was getting a lot worse. He did</p> <p>12 not exhibit those back in 2003, that he was paranoid</p> <p>13 and that he couldn't leave the house. Those are a</p> <p>14 definite worsening of his condition in 2005.</p> <p>15 Q. And do you know whether he suffered from</p> <p>16 bipolar in, say, July of 2003?</p> <p>17 A. I don't know that.</p> <p>18 Q. You testified on direct examination that,</p> <p>19 in effect agreeing with counsel's characterization,</p> <p>20 that there was a fluctuation in Mr. Pizzuto's mental</p> <p>21 health throughout the course of your treatment with</p> <p>22 him?</p> <p>23 A. Yes.</p> <p>24 Q. Sometimes he would be better and sometimes</p>
<p style="text-align: right;">59</p> <p>1 A. Yes, he did. By the medicines he put him</p> <p>2 on, you can tell he agreed.</p> <p>3 Q. When we see drugs related to lithium, it is</p> <p>4 apparent that there's a bipolar diagnosis?</p> <p>5 A. Yes.</p> <p>6 Q. With regard to Mr. Pizzuto, those drugs are</p> <p>7 being prescribed when?</p> <p>8 A. They are being prescribed by Dr. Sadowski</p> <p>9 and he sees him, I believe, every four to eight</p> <p>10 weeks.</p> <p>11 Q. Can you tell me the time frame as to when</p> <p>12 he's diagnosed bipolar?</p> <p>13 A. It appears that it would be in the fall of</p> <p>14 2005.</p> <p>15 Q. Throughout the course of your treatment of</p> <p>16 Mr. Pizzuto, has he presented with similar symptoms</p> <p>17 as far as a mental health standpoint throughout that</p> <p>18 time?</p> <p>19 MS. EISENBERG: Objection.</p> <p>20 A. Yes.</p> <p>21 Q. Do you have any opinion as to whether or</p> <p>22 not his bipolar condition existed for him before he</p> <p>23 was officially diagnosed in 2005?</p> <p>24 A. I did not see evidence of it, but there was</p>	<p style="text-align: right;">61</p> <p>1 worse, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And did you associate that with him weaning</p> <p>4 himself off of medications, that that was causing</p> <p>5 the worsening?</p> <p>6 A. I believe it caused the worsening, yes.</p> <p>7 Q. So when he was weaning himself off of Paxil</p> <p>8 to the point where he discontinued Paxil altogether,</p> <p>9 you believe that was the cause of his worsening</p> <p>10 mental health?</p> <p>11 A. Yes.</p> <p>12 Q. Did I understand you correctly that that</p> <p>13 worsening was somehow, that you couldn't recover</p> <p>14 from that? I think you said he was on three</p> <p>15 medications and still having suicidal thoughts, I</p> <p>16 think is what you said. Is the worsening something</p> <p>17 that you can't go back and get better?</p> <p>18 A. Not necessarily. It is a case-by-case</p> <p>19 basis. I honestly cannot tell you how much and to</p> <p>20 what degree his cocaine use played into this. I</p> <p>21 don't know. That could also have made him worse,</p> <p>22 made him paranoid.</p> <p>23 Q. What you are saying is that he aggravated</p> <p>24 his underlying bipolar condition perhaps through</p>

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1 cocaine use?

2 A. As well as weaning off his meds. It is
3 hard to tell which one or to what degree each of
4 them played into it.

5 Q. Is Paxil something that is prescribed for
6 someone with bipolar?

7 A. Not necessarily. It is more for people who
8 have anxiety and depression.

9 Q. Assuming that he had bipolar disorder, and
10 as you mentioned genetic-related condition and he
11 had that back in 2003, is it fair to say that he had
12 not been diagnosed that in 2003?

13 A. Correct.

14 Q. So that it was a misdiagnosis in 2003 for
15 anxiety and depression rather than bipolar, correct?

16 MS. EISENBERG: Objection.

17 A. I wouldn't call it a misdiagnosis. Bipolar
18 is a very difficult diagnosis to make. You actually
19 have to have someone become manic to make that
20 diagnosis. Most people who are bipolar do present
21 as depressed and anxious. It is a very difficult
22 diagnosis. The people at Greater Lawrence Mental
23 Health who treated him for depression and anxiety, I
24 couldn't say that they made a misdiagnosis or we

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1 did, because you can't make it until someone goes
2 manic or off the deep end.

3 Q. I wasn't throwing stones so much.

4 A. I understand.

5 Q. But that he was at least incorrectly
6 diagnosed. Would you agree with that?

7 MS. EISENBERG: Objection.

8 A. I still have a hard time saying incorrect.
9 It is one of the most -- it is one of the hardest
10 diagnoses to make in mental health as a
11 psychiatrist. It is a label that people try not to
12 make until you are absolutely certain. Usually you
13 wouldn't give that diagnosis until they hit a
14 rock-bottom situation like he did, because you don't
15 floridly manifest it.

16 Q. Assuming Mr. Pizzuto was diagnosed with
17 bipolar in 2003, 2002, what kind of medication would
18 normally have been prescribed for him at that point?

19 A. Honestly, because he was doing well with
20 the Wellbutrin and the Paxil, if he was doing well,
21 I am not so sure that a psychiatrist would have
22 changed it. Even a trained psychiatrist could have
23 said: You're doing well, stay on this, stay in
24 therapy and we'll see how it goes. If you are

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1 having a problem, we can had lithium, Lamictal or
2 other things. If a patient is doing well, you don't
3 add new medication because of a diagnosis. Only if
4 someone is clinically needing it do you change the
5 medication.

6 Q. These lithium and related medications, what
7 do those do?

8 A. Lamictal in and of itself is a mood
9 stabilizer. That helps people not be anxious or
10 angry. It keeps the mood swings to a minimum. The
11 lithium has been used for many years for bipolar to
12 keep people from going manic. There were several
13 points. The two hospital records did show that his
14 lithium levels were very, very low, which indicated
15 he was not taking his lithium. That's one of the
16 most important medicines for someone who has bipolar
17 to keep them out of these life stress situations.
18 It keeps them more stable.

19 Q. And is it clear to you from your review of
20 the records and your own knowledge that Mr. Pizzuto
21 needs the lithium now?

22 A. Yes.

23 Q. And do you know whether he needed it back
24 in 2002, 2003?

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1 A. He was not having the mood swings that he
2 was having in 2005, he did not have those in 2003.
3 I would not have thought it a useful thing for him
4 to be on lithium, because it does have side effects
5 too.

6 Q. I know you didn't start treating him until
7 June or so of 2003. Were you aware that he had been
8 out of work for a number of months, from October of
9 '02 to sometime in February '03, totally out of work
10 for mental health reasons?

11 MS. EISENBERG: Objection.

12 A. No, I was not aware.

13 Q. Would that have been good to know?

14 A. Yes.

15 Q. And I also heard your testimony that as far
16 as things that were going on between him and work,
17 those are things that he chose not to discuss with
18 you, correct?

19 A. Correct.

20 Q. So if you had history given to you back in
21 that time frame, June of '03, that he believed there
22 was some grand conspiracy against him at work,
23 people sabotaging his work records, following him
24 around on his route to steal packages, things of

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18 (Pages 66 to 69)

<p style="text-align: right;">66</p> <p>1 that nature, that would have been important for you</p> <p>2 to know as to whether or not he might be suffering</p> <p>3 from bipolar, correct?</p> <p>4 A. Correct.</p> <p>5 Q. Is paranoia behavior one of the symptoms of</p> <p>6 bipolar?</p> <p>7 A. It can be, yes.</p> <p>8 Q. Give me some other examples of behavior.</p> <p>9 A. Also, flight of ideas. If you're talking</p> <p>10 to someone and they go from idea to idea and they</p> <p>11 are flipping around, that's a sign of a manic mind.</p> <p>12 If they talk really fast and you can't keep up with</p> <p>13 them, that's mania. And grandiose thoughts, like</p> <p>14 you think you are much more important than you</p> <p>15 really are, the classic example of bipolar mania is</p> <p>16 Napoleon who went to conquer all of Europe, the</p> <p>17 entire world, because he was so important. People</p> <p>18 who go manic think they are the center of the</p> <p>19 universe and everyone is against them or for them,</p> <p>20 one or the other.</p> <p>21 Q. What about emotional outbursts?</p> <p>22 A. Anger outbursts, inability to modulate your</p> <p>23 feelings is also a sign of mania as well as some</p> <p>24 other psychiatric disorders, but it can be part of</p>	<p style="text-align: right;">68</p> <p>1 Also, spending money that you don't</p> <p>2 have. A lot of people with bipolar have financial</p> <p>3 problems because they spend money they don't have.</p> <p>4 They go into the zone and they don't see money as</p> <p>5 real and the world is their oyster and they can do</p> <p>6 whatever they want. They usually get in trouble</p> <p>7 with the law, their spouse, or work or something.</p> <p>8 That kind of stops their mania and they have to deal</p> <p>9 with life. They push it so far that something snaps</p> <p>10 and they have to deal with some kind of negative</p> <p>11 consequence. An affair is a classic example.</p> <p>12 Q. Now, you had testified on direct as far as</p> <p>13 overall with regard to people who have bipolar that</p> <p>14 it may be an underlying condition that is</p> <p>15 aggravated, I think was the word you used, by</p> <p>16 something, some life circumstance or whatever, that</p> <p>17 brings out the symptoms. Is that fair to say?</p> <p>18 A. Yes.</p> <p>19 Q. With regard to your knowledge of</p> <p>20 Mr. Pizzuto, what brought that out, according to</p> <p>21 him?</p> <p>22 A. He feels that his depression started with</p> <p>23 problems at work before he became my patient.</p> <p>24 Q. Assuming that that is so, that the history</p>
<p style="text-align: right;">67</p> <p>1 it, yes.</p> <p>2 Q. What about difficulty coping with others?</p> <p>3 A. Yes. Also, high-anxiety disorders. It is</p> <p>4 hard to tease out in the diagnosis where the anxiety</p> <p>5 piece comes in. It is not as typical of bipolar but</p> <p>6 it can be there.</p> <p>7 Q. One final one, what about difficulty</p> <p>8 performing tasks as far as being able to concentrate</p> <p>9 long enough?</p> <p>10 A. That can definitely be a part of it when</p> <p>11 you're not on your medications and not doing well,</p> <p>12 yes.</p> <p>13 Q. There was testimony about an extramarital</p> <p>14 affair that had come up. A question on that. You</p> <p>15 testified that Mr. Pizzuto had associated that</p> <p>16 mistake in his life, let's say, as a symptom arising</p> <p>17 out of his bipolar condition. Does that make sense</p> <p>18 to you that he did that?</p> <p>19 A. There is a part of bipolar disease in which</p> <p>20 people do rash things without really thinking. Road</p> <p>21 rage, getting traffic violations, extramarital</p> <p>22 affairs, not really thinking through the</p> <p>23 consequences of their actions. When you are in a</p> <p>24 more manic state, that happens.</p>	<p style="text-align: right;">69</p> <p>1 is correct, something that happened at work,</p> <p>2 something about unfounded accusations by a</p> <p>3 supervisor and so forth, is that the kind of thing</p> <p>4 that could exacerbate someone's underlying bipolar</p> <p>5 disorder?</p> <p>6 A. Yes.</p> <p>7 Q. Did you reach any conclusions regarding</p> <p>8 Mr. Pizzuto's ability to work during the course of</p> <p>9 your treatment of him?</p> <p>10 A. Yes. When he came in for the SSI</p> <p>11 paperwork, at that point he was so anxious and so</p> <p>12 depressed and so scattered in his thoughts, he</p> <p>13 really was not able to work. That's why Rosalyn</p> <p>14 Kenney filled out all of the papers for the SSI aid</p> <p>15 that he needed.</p> <p>16 Q. And that was approximately the end of 2005?</p> <p>17 A. Correct.</p> <p>18 Q. So by that point he had progressed to the</p> <p>19 point of disability from work?</p> <p>20 A. Yes.</p> <p>21 Q. Was there overall a pattern towards that</p> <p>22 throughout your seeing him?</p> <p>23 A. Yes.</p> <p>24 Q. And were you aware that at some point in</p>

<p>70</p> <p>1 time in that time frame that he did try to work 2 someplace?</p> <p>3 A. Yes. With family is all we heard, but he 4 might have tried somewhere else. He was not very 5 forthcoming in giving personal information to me or 6 my staff that he didn't want to give.</p> <p>7 Q. Has Mr. Pizzuto been responsive to 8 treatment for the bipolar?</p> <p>9 A. He has responded well to certain 10 medications at certain times.</p> <p>11 Q. With regard to this alleged cocaine use, to 12 put it that way, that was shown in those medical 13 records, is resort to something like that, something 14 like cocaine, something that also is not atypical?</p> <p>15 A. Yes. It is not a surprise. A lot of 16 people with bipolar self-medicate to feel better. 17 They will use alcohol, marijuana, cocaine, instead 18 of their medications to feel well or feel better, 19 even though it is not a good choice.</p> <p>20 Q. Understood. The cocaine use, if you would, 21 to make that the example, would that be something 22 that someone might resort to stupidly if they are 23 feeling low?</p> <p>24 A. Yes.</p>	<p>72</p> <p>1 comes in next visit, I want him to fill out 2 surveys."</p> <p>3 I read the note. My response was that I 4 did not get details from his wife either about how 5 ugly things were from the Teamsters, but I would 6 encourage her when she follows up with him to see a 7 counselor because meds will not fix all of the 8 traumas that he's going through.</p> <p>9 My guess is that he also has some PTSD, 10 posttraumatic stress disorder, from his mom's 11 suicide that he needs to work through which he never 12 did as a child. My suggestion to her was to get him 13 back on Wellbutrin, and we could give him some 14 samples so he wouldn't have to spend a whole lot of 15 money. I guess this was when he was out of work and 16 hard up for money. He definitely needs close 17 follow-up within the next three to four weeks. I 18 agreed with her, giving him a bipolar survey and a 19 Beckman score to see where he is. I can give her 20 the files for those. He has a lot going on.</p> <p>21 Q. Okay. It is fair to say from that note 22 that you did, as you say, suspect that there were 23 other mental conditions that played beyond anxiety 24 and depression?</p>
<p>71</p> <p>1 Q. So on the down part of the cycle?</p> <p>2 A. Yes.</p> <p>3 Q. Do you have any opinion on Mr. Pizzuto's 4 prognosis with regard to bipolar?</p> <p>5 A. I think it can be very good if he continues 6 with his therapist consistently, with his 7 medications consistently, and with his appointments 8 consistently.</p> <p>9 (Marked, Exhibit 96, patient message.)</p> <p>10 Q. Doctor, you indicated on or off the record 11 that as far as the records that were produced in 12 this case that there may have been some records not 13 produced that would have represented notes, 14 interoffice notes?</p> <p>15 A. Yes, correct.</p> <p>16 Q. Showing you what's been marked as Exhibit 17 96, is that one such note?</p> <p>18 A. Yes.</p> <p>19 Q. Could you just go through the circumstances 20 and the content of that note, please.</p> <p>21 A. Yes. My nurse practitioner, Rosalyn 22 Kenney, sent me an interoffice message on 4/26/05 23 asking me to read her note from last Friday. She 24 says. "You know him better than I do. When he</p>	<p>73</p> <p>1 A. Yes.</p> <p>2 Q. And you had some suspicion that bipolar was 3 one of those?</p> <p>4 A. Yes.</p> <p>5 Q. Do you know what precipitated that thought 6 that it was bipolar?</p> <p>7 A. She asked me to read her note from April 8 26, '05. In her note she talks about him feeling as 9 though he always has to keep an extra eye out 10 because people are trying to kill him, he feels very 11 paranoid and that he's weaning himself off meds 12 again. And he's feeling as though he cannot -- that 13 he feels that he has a good handle on things. That 14 was the tipoff to me. All of this is going on and 15 he thinks people are trying to kill him but yet he 16 says he has a handle on things. That is pretty 17 classic bipolar.</p> <p>18 I'm not a psychiatrist. I don't label 19 people with bipolar diagnosis. That's a big 20 diagnosis to give someone. That made me very 21 suspicious and concerned for him.</p> <p>22 Q. I think you mentioned that what that meant 23 had something to do with someone in a euphoric or 24 manic state?</p>

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Exhibits: 113-116

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PAUL PIZZUTO

Plaintiff

vs.

Docket No. 04-12492 GAO

CROSSKEN EXPRESS, INC., STEVEN
CROSSKEN, JOSEPH HAMILTON, GREG
SWEATT, AND ARTHUR LEVERIS

Defendants

DEPOSITION OF MARC M. SADOWSKY, M.D.

Thursday, August 9, 2007, 3:36 p.m.

New England Neurological Associates

Merrimac Street, Building

Lawrence, Massachusetts

----- Reporter: PATRICIA A. BUCKO -----

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Exhibit 29

Exhibit 29

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16 (Pages 58 to 61)

58	<p>1 A. And we checked blood work and that was</p> <p>2 okay. And he continued to periodically use drugs</p> <p>3 and alcohol.</p> <p>4 Q. All right, just a few general questions</p> <p>5 about bipolar disorder.</p> <p>6 A. Sure.</p> <p>7 Q. Is it typically an inherited disease?</p> <p>8 A. I think it's frequently inherited. I</p> <p>9 don't, I don't -- I think people are still trying to</p> <p>10 work to understand the genetics of this, but there</p> <p>11 does seem to be some degree of inheritability.</p> <p>12 Q. I guess my question is, can it appear</p> <p>13 suddenly? Can someone who is basically fine one</p> <p>14 day, no symptoms of depression, no symptoms, no mood</p> <p>15 variability, suddenly become bipolar?</p> <p>16 A. Well, I think it's unlikely. I mean, there</p> <p>17 are -- that is not a typical scenario. I mean, I</p> <p>18 can't tell you that that could never happen, but I</p> <p>19 don't recall that having happened.</p> <p>20 I think that sometimes it can, it can be</p> <p>21 induced by substances or medicines that people have</p> <p>22 been given, you know, without there having been any</p> <p>23 previous history of mood difficulties.</p> <p>24 Q. And I think you indicated before that it</p>	60	<p>1 somebody in a laboratory. You know, probably</p> <p>2 isolating him in a laboratory would be a stressful</p> <p>3 event. So it's not -- but I mean, when people look</p> <p>4 at this in general, when you look at the natural</p> <p>5 progression, it seems to be getting worse over time,</p> <p>6 and the mood stabilizing medicines seem to help with</p> <p>7 it. Antidepressants can make it worse, and, you</p> <p>8 know, other drugs and alcohol could make it worse.</p> <p>9 Q. Okay, okay.</p> <p>10 MS. EISENBERG: I have no more</p> <p>11 questions. Do you have any questions?</p> <p>12 MR. MULHEARN: I have a few.</p> <p>13 THE WITNESS: Okay.</p> <p>14 MS. EISENBERG: Do you need a break?</p> <p>15 THE WITNESS: No.</p> <p>16 MR. MULHEARN: It won't be too long.</p> <p>17 THE WITNESS: Okay, good.</p> <p>18 EXAMINATION</p> <p>19 BY MR. MULHEARN:</p> <p>20 Q. Doctor, I don't know if you were asked if</p> <p>21 you are Board certified?</p> <p>22 A. Yes, I am Board certified.</p> <p>23 Q. Since when?</p> <p>24 A. Let's see. I think 1990. No, '91. I</p>
59	<p>1 can exist in mild form for a while, so that others</p> <p>2 around the person might not realize that someone has</p> <p>3 a disorder, or....</p> <p>4 A. Yes. Well, I mean, I didn't speak to that</p> <p>5 specifically, but, because that was when we were</p> <p>6 talking about the global assessment of functioning.</p> <p>7 You know, bipolar disorder is often</p> <p>8 considered to be an illness with a course to it.</p> <p>9 You know, that is, that it can get worse over time,</p> <p>10 and that is one of the important aspects of</p> <p>11 treatment. That is that we believe, that treatment</p> <p>12 can help prevent that from happening.</p> <p>13 Q. Okay.</p> <p>14 Can it worsen over time even without</p> <p>15 some outside stressing events?</p> <p>16 A. Yes.</p> <p>17 Q. Okay.</p> <p>18 A. Yes. I mean, I think, I'm saying with,</p> <p>19 with just in general, you know, I mean, I think</p> <p>20 it's, at the same time, not to get, not to be too</p> <p>21 semantic about this, but it's difficult to envision</p> <p>22 sort of a life without any stressful, you know,</p> <p>23 things happening in someone's life.</p> <p>24 So it's not like we could isolate</p>	61	<p>1 think you have to be in practice for a year. So I</p> <p>2 finished residency in 1989. I think I sat for the</p> <p>3 written boards in 1990, and then I think I took the</p> <p>4 oral boards in '91. Because you have to pass the</p> <p>5 written boards and then you can take the oral</p> <p>6 boards. So I think since 1991.</p> <p>7 Q. And that certification would be in</p> <p>8 psychiatry?</p> <p>9 A. Right, adult psychiatry.</p> <p>10 Q. You were referred to Mr. Pizzuto by Dr.</p> <p>11 Moverman, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And did you have the benefit of Mr.</p> <p>14 Moverman's recollections, clinical notes to review?</p> <p>15 A. Yes.</p> <p>16 Q. And those were provided to you, and you</p> <p>17 reviewed them?</p> <p>18 A. I believe so.</p> <p>19 Q. I gather from direct testimony, that at</p> <p>20 some point in time there was a bipolar diagnosis</p> <p>21 actually made with regard to Mr. Pizzuto?</p> <p>22 A. Yes.</p> <p>23 Q. Could you tell, approximately, when that</p> <p>24 was, when that actual diagnosis was made?</p>

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17 (Pages 62 to 65)

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1 A. I believe -- well, as I said, we, when we
2 had first met, that was, that was a possible
3 diagnosis, so that is September 2005. And then I
4 think I became increasingly convinced of that in the
5 fall of 2005.

6 Q. And the thing that, you have spoken to this
7 somewhat, the symptoms that led to that diagnosis of
8 him, you testified somewhat, but I just wanted to,
9 perhaps, stand on that, was maybe you could just
10 tell me.

11 A. Well, I think that the symptoms that he was
12 talking about, the irritability, racing thoughts,
13 episodes of euphoria, and then the worsening on the
14 antidepressant medication, you know, and I think a
15 history of not having responded well to
16 antidepressants in general, those were some of the
17 factors involved in this.

18 Q. All right, all right.

19 Now, the hallmark --

20 A. And I'm sorry, let me just add, the family
21 history.

22 Q. Sure.

23 A. Was another, was another factor.

24 Q. Now, would his, the mood swings, that

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1 finding with regard to him, would that be a major
2 part of the diagnosis?

3 A. Well, yes, his report of mood swings. We,
4 we, you know, we do like to try to get some
5 perspective evidence of the mood charts, but we
6 never seem to be able to get that. But, yes, I
7 mean, the reports of mood swings, ups and downs,
8 yes.

9 Q. And this idea of rapid, or pressured
10 speech?

11 A. Yes.

12 Q. Could you define what that is?

13 A. Rapid, loud speech, basically.

14 Q. That's what "pressured" means?

15 A. Yes.

16 Q. Is it like someone going into some sort of
17 a rant?

18 A. Could be, sure, yes.

19 Q. And that was something that he had denied,
20 and something that you had not observed in him?

21 A. Correct.

22 Q. Would impaired judgment also be a symptom
23 of the bipolar?

24 A. It can be, sure, and impulsivity. I mean,

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1 I think that sort of goes along with it.

2 Q. So impulsive meaning --

3 A. Well, I, I just sort of think of impulsive
4 as acting before you think.

5 Q. Okay. And perhaps doing something
6 inappropriate as a result?

7 A. Right.

8 Q. And things like inappropriate humor might
9 be --

10 A. Could be, sure.

11 Q. What about paranoia, would that be
12 something that would be consistent with bipolar?

13 A. It can be, sure.

14 Q. And in Mr. Pizzuto's case, he did have
15 signs of paranoia, correct?

16 A. I'm -- I mean, I talked about that in the
17 initial evaluation. I think that that was my
18 impression. But, again, that has to be tempered by
19 the fact that when people report things to me, I
20 don't have any real way to verify --

21 You know, when someone says they are
22 being harassed at work, they may be harassed at
23 work; I don't have a way to know that. So, I mean,
24 when people are telling me that they are being

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1 followed in black helicopters, you know, I, I pretty
2 much think that that, that's not actually happening.

3 Q. Okay.

4 A. But when, you know -- so I mean, I suppose
5 I am making a distinction between what may be
6 happening in the normal course of events, and what
7 seems to be a bit less likely to be happening.

8 Q. On its face?

9 A. Right, on the face of it. But, again, I,
10 I'm making clinical interpretations about what's
11 going on because, as I said before, I'm not a
12 factfinder. That is, I don't have a way to go into
13 the workplace and see if people are being harassed
14 or not.

15 Q. Now, in Mr. Pizzuto's case, he had talked
16 about someone trying to run him over when he was
17 with his dog; the dog got killed?

18 A. Right, right.

19 Q. And is it fair to say that even throughout
20 the course of treatment after that initial
21 consultation, that he continued to speak of things
22 like that, that people were out to get him?

23 A. Well, I think that -- well, I mean, I think
24 he had a sense of, you know, at work, particularly,

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18 (Pages 66 to 69)

<p style="text-align: right;">66</p> <p>1 of people harassing him. And, you know, he talked 2 about having been fired, I think, in the initial 3 evaluation. He said that he had been fired several 4 times before he was finally fired. You know, I'm, I 5 am not entirely sure what that entails, but a sense 6 about that he, you know, he didn't feel like he was 7 being treated fairly. 8 Q. But if, for example, the things he was 9 complaining of, someone trying to run him down, had 10 no basis in reality, would that have been a symptom 11 of paranoia? 12 A. Well, if it had no basis in reality, then 13 it would have been a delusion. 14 You know, a false belief, or a 15 hallucination. You know, I think that the paranoia 16 part is what the intent of the driver is. 17 You know, that is that -- you know, the 18 way that I was looking at it was that there was a 19 traffic accident; his dog was killed, and he was 20 injured. But generally, people aren't trying to run 21 people down, you know. 22 I mean, it's a possibility, but that was 23 the part that might have been paranoid. That is 24 that if he felt that there was a person out there</p>	<p style="text-align: right;">68</p> <p>1 Q. Is it typical or let's say not unusual for 2 someone with bipolar disorder to be noncompliant 3 with their medications? 4 A. Yeah, we see that frequently. 5 Q. Is there a reason for that, or commonly 6 understood reason for that? 7 I don't know if there is a commonly, I 8 don't know that there is a commonly understood 9 reason. I know there are a variety of reasons. He 10 expressed some of those reasons. 11 I think, I think that oftentimes, you 12 know, one thought with people on stabilizing 13 medicine is that people like the feeling of the 14 mania, and the mood-stabilizing medicines are more 15 effective, actually, of stemming the mania than they 16 are at preventing depression, so they may back off 17 on the mood-stabilizing medicines or not take them, 18 because they like being manic or hypomanic, which is 19 an attenuated form of mania. 20 Q. And was Mr. Pizzuto's reported drug use, 21 cocaine use, was that something that was somehow 22 connected with his disease? 23 A. Well, I think that there is frequently a 24 comorbid use of substances in mood disorders. And</p>
<p style="text-align: right;">67</p> <p>1 that was trying to do him harm when, you know, with 2 no basis, and, you know, that is, and, again, I 3 mean, I -- we're getting into speculation here, 4 because I didn't ask him if he knew the driver, 5 what -- you know, I didn't go into -- 6 Q. That is very helpful. The paranoia would 7 be misinterpreting whether the driver intended this? 8 A. Right, exactly, right. 9 Q. And a delusion would be, this never even 10 happened? 11 A. Right, or, yes. I mean, I mean, yes, if -- 12 a delusion is fixed false belief. Paranoia can be, 13 I mean if this was a systematized thing, then you 14 would say it was delusional. If it was maybe just 15 one episode that I got into a car accident, the 16 person was trying to hit me, but there was not, I 17 mean, again this is a semantic distinction, but is, 18 I mean, paranoia is often delusional, too, but.... 19 Q. Forgive me, but paranoia could be a symptom 20 of bipolar? 21 A. Sure. 22 Q. As well as any symptoms that you might 23 associate with depression? 24 A. Correct.</p>	<p style="text-align: right;">69</p> <p>1 you know, as he noted, he was using it to escape. 2 And, you know, I think part of what he was trying to 3 escape was how he was feeling. So I, you know, all 4 I could say is that there was, you know, there is 5 evidence that these things often can go together; 6 that the people with bipolar disorder are more 7 likely to have substance abuse problems. 8 You know, I think that knowing -- to say 9 there was a direct cause and effect relationship in 10 this case, I am not able to say that. But we know 11 that there is frequent co-occurrence of these 12 illnesses. 13 Q. And as I say, with him, it was trying to 14 escape his depression by getting high on cocaine? 15 A. Well, I think depression and anxiety is 16 what he was, you know, trying to escape. 17 Q. Is it typical with patients with bipolar, 18 to be in a state of denial that they have a mental 19 illness, or that they need treatment? 20 I was talking about generally, with 21 people with mental illness. 22 A. Yes. Well, I think that, I think that the, 23 people with manic depression tend to come in more 24 when they are depressed. And when they are manic</p>

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19 (Pages 70 to 73)

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1 they, unless they get brought into the hospital or
2 something like that, they are not generally seeking
3 treatment, because they feel really good.

4 So I guess to that extent, they deny
5 that there is anything wrong with them.

6 Q. And --

7 MR. MULHEARN: Strike that, my beginning
8 of a question, because I think you already answered
9 it.

10 Q. Now, you didn't treat him back in 2003,
11 correct?

12 A. Correct.

13 Q. But you did have a history given to you
14 that he had been fired from work because he was
15 driving, trying to run somebody down, a supervisor
16 down or something to that effect?

17 A. Correct, that's what he told me.

18 Q. Now, if, in that timeframe, in July of 2003
19 or thereabouts, before he was let go, Mr. Pizzuto
20 had emotional outbursts at work, yelling at
21 supervisors, making threats, things of that nature,
22 would that be consistent with him having bipolar, at
23 that time?

24 A. It could be. It could be consistent, sure.

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1 Q. And if you were to add to that that he had
2 a, expressed feeling of being harassed, persecuted,
3 sabotaged, some conspiracy of the supervisors to
4 make him look bad to get him fired, would that also
5 be consistent?

6 A. It could be consistent, sure.

7 Q. And if he had problems at work in the sense
8 of inability to actually do a relatively simple
9 task, which in this case he was delivering freight,
10 was, and was having difficulty scanning the freight
11 with an electronic device to make sure what's in the
12 truck is accounted for, to the point he had to count
13 and recount things and so forth, to the point of a
14 spectacle, would that be consistent with a bipolar
15 condition?

16 A. Again, it could be. I mean, it, the things
17 that you are describing, I don't have a way,
18 obviously, I wasn't, I'm not aware of these things
19 until you are telling me about them, and I mean, I
20 could say that they are not necessarily inconsistent
21 with it. But, you know, but, yes, I mean, all those
22 things, I mean, because, because again, this is
23 speculation, but, you know, I mean, people can have
24 problems with anxiety or concentration or, you know,

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1 and may be unable to do those kind of things.

2 Q. Did you have some sense, with Mr. Pizzuto,
3 that he was in an undiagnosed --
4 (Cell phone rings.)

5 MR. MULHEARN: Strike that.

6 Q. That he was undiagnosed with bipolar; that
7 that diagnosis had not been made before he saw you?

8 A. Well, yes. As I said before, he had been
9 treated for depression. At least that's what he had
10 told me. He had been treated for depression on and
11 off for three or four years prior to that, and I, I
12 mean, I wouldn't be surprised that, that he, that he
13 had had bipolar disorder from before then.

14 Q. So you wouldn't be surprised if that was a
15 condition that existed back in 2003?

16 A. Correct.

17 Q. I think you have answered this a bit, but
18 I'll just ask you a little bit more, maybe a little
19 bit differently.

20 In your experience in dealing with
21 people who have bipolar disorder, do you get a sense
22 that they're perceived by others, lay people with
23 whom you deal on a regular basis, as being something
24 wrong with them, like mentally ill, or threatening

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1 or anything like that?

2 A. I wouldn't say that sort of a rule. I
3 mean, I, you know, because I have a, you know, a
4 relatively-varied patient population. I think some
5 people may be better received as sort of, you know,
6 irritable, and easily agitated, and other people are
7 not, you know.

8 And I suppose it speaks to the magnitude
9 of the illness, the effectiveness of the treatment,
10 combines with treatment. If I am correct about the
11 diagnosis, you know, and things like that. Because
12 there are, you know, I don't have a way of sort of
13 objectively -- I mean, I can take the criteria, but
14 there is not a lab test that I can do to verify the
15 diagnosis.

16 Q. Is it typical and normal that there is a
17 good response to treatment by someone with bipolar?

18 A. Well, we would like to think that, but I
19 mean that there, and I don't know off the top of my
20 head, but I think there is a significant proportion
21 of people who don't respond to treatment, so....

22 Q. In this particular case, Mr. Pizzuto's
23 case, I will just ask you to assume a few things.

24 A. Yes.

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20 (Pages 74 to 77)

<p style="text-align: right;">74</p> <p>1 Q. That he was working for Airborne; he was</p> <p>2 exhibiting some conduct that has been the subject of</p> <p>3 this suit, paranoia, inappropriate statements and</p> <p>4 threats to supervisors and that kind of thing, to</p> <p>5 the point where he was sent to a drug and alcohol</p> <p>6 test which was negative, but then within a week</p> <p>7 after that another incident takes place and he is</p> <p>8 fired, because they are afraid of him, okay?</p> <p>9 If, instead of being fired, there had</p> <p>10 been, say, a medical leave, involuntary medical</p> <p>11 leave at that time, and resort to treatment at that</p> <p>12 time, would that, in your opinion, have been helpful</p> <p>13 for Mr. Pizzuto?</p> <p>14 A. Well, I think it, it's clearly a</p> <p>15 possibility that it would have been helpful, sure.</p> <p>16 Q. And the nature of the treatment, assuming</p> <p>17 he was diagnosed correctly, given the proper</p> <p>18 medications, would it be medication and something</p> <p>19 else?</p> <p>20 A. Well, yes. I mean -- well, I don't know</p> <p>21 what other people might recommend. I was</p> <p>22 recommending medication and psychotherapy, yes.</p> <p>23 Q. And just with regard to your own course of</p> <p>24 treatment, have you seen improvement with certain</p>	<p style="text-align: right;">76</p> <p>1 Q. What about his prognosis? Do you have an</p> <p>2 opinion about that as to how he might fare?</p> <p>3 A. I'd say it's, you know, between guarded and</p> <p>4 good. I mean, I think in large part it depends on</p> <p>5 his ability to maybe follow through on some of the</p> <p>6 things that I have recommended to him.</p> <p>7 You know, I still think that abstaining</p> <p>8 from drugs and alcohol and working with a therapist</p> <p>9 would be helpful.</p> <p>10 Q. Now, just a few more.</p> <p>11 You had mentioned on direct examination,</p> <p>12 factors that could bring on symptoms of the bipolar</p> <p>13 disorder. If I could flush that out just a little</p> <p>14 bit with you.</p> <p>15 Is there, like Mr. Pizzuto, do you think</p> <p>16 that he has had bipolar disorder for a long period</p> <p>17 of time, not symptomatic, for example, or do you</p> <p>18 think he has developed it later, or what do you</p> <p>19 think?</p> <p>20 A. Well, it's, it's kind of hard to say. I</p> <p>21 mean, you know, I think that, you know, with a lot</p> <p>22 of the illnesses that we treat in psychiatry, I</p> <p>23 think we sort of think about the idea that people</p> <p>24 have a predisposition, and then there's some type of</p>
<p style="text-align: right;">75</p> <p>1 medications that have been prescribed?</p> <p>2 A. For Mr. Pizzuto?</p> <p>3 Q. Yes.</p> <p>4 A. Yes, I have.</p> <p>5 Q. And in particular?</p> <p>6 A. In particular, what kind of improvements?</p> <p>7 Q. No, sorry, which medications?</p> <p>8 A. I think that he's doing better on the</p> <p>9 medicines that he's on, which are Lithium, Lomectol</p> <p>10 and Effexor.</p> <p>11 Q. And, certainly, his use of alcohol or drugs</p> <p>12 that were mentioned, they are something that would</p> <p>13 be counterproductive?</p> <p>14 A. Correct.</p> <p>15 Q. Correct?</p> <p>16 Did you have an opinion with regard to</p> <p>17 his ability to work during this timeframe of your</p> <p>18 treatment? Has there been something consistent; has</p> <p>19 there been a change in that ability, better, worse,</p> <p>20 any idea of that?</p> <p>21 A. I haven't really rendered an opinion about</p> <p>22 that. So, I mean, I think he had been working, and</p> <p>23 then I think he hasn't been working. And I haven't</p> <p>24 talked to him directly about that.</p>	<p style="text-align: right;">77</p> <p>1 event, stress, or something happens, that may, that</p> <p>2 may precipitate this. And as I was referring to</p> <p>3 before, could be, you know, drugs, medicines,</p> <p>4 traumatic events in one's life; all sorts of</p> <p>5 different things can do it.</p> <p>6 I don't have a good sense, particularly</p> <p>7 with him, I mean, I didn't get sort of a</p> <p>8 blow-by-blow history, except to the extent that he,</p> <p>9 when we had first met, he said that he had been in</p> <p>10 and out of treatment and on and off medications for</p> <p>11 three to four years prior to my having seen him,</p> <p>12 which puts that in early 2001, 2002, something like</p> <p>13 that. So, I don't have, I don't have a way to</p> <p>14 really get really good retrospective information.</p> <p>15 You know, if a person has been in</p> <p>16 treatment, if there is some kind of treatment</p> <p>17 documentation, then that makes it a little easier to</p> <p>18 establish these things.</p> <p>19 Q. And at least -- well, he reported to you</p> <p>20 that he had this very traumatic situation with his</p> <p>21 mother committing suicide, correct?</p> <p>22 A. Right.</p> <p>23 Q. Something that happened long ago, but</p> <p>24 something that is still obviously a great pain to</p>

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21 (Pages 78 to 81)

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1 him, true?

2 A. Uh-huh, yes.

3 Q. But beyond that, there were concerns about
4 his brother. Would it be fair to say that what he
5 was reporting to you as what was bothering him was
6 his work situation?

7 A. Well, I think, I think that that was, that
8 was part of it.

9 As I said, he had alluded to, you know,
10 the big picture, which I don't know exactly what,
11 what that means. He also kind of alluded to a past
12 with people, that prevented him from going to
13 various gyms, and I don't know what that meant. I
14 mean, I don't know what the problems were.

15 So, you know, part of what makes it
16 difficult is that there is, before he has been
17 somewhat cryptic about some of this stuff and, you
18 know, has not wanted to divulge much information
19 about it.

20 Q. So, then, for you to actually form an
21 opinion that you would be comfortable with as to
22 whether these work stressors and firings and so
23 forth, and the treatment at work, brought on these
24 symptoms, you would need to have some more facts and

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1 certainly medical records of treatment at that time?

2 A. That would certainly help. I mean, I
3 could -- it, it had an adverse effect on his mood.
4 I mean, I don't have a way to tell you that it was a
5 cause of it. I think clearly it has exacerbated
6 things for him.

7 MR. MULHEARN: I have no further
8 questions.

9 MS. EISENBERG: Okay, just a few.

10 I just want to clarify something that
11 we, we have been touching on.

12 EXAMINATION

13 BY MS. EISENBERG:

14 Q. On the one hand there are, you testified
15 to, and in response to Mr. Mulhearn's questioning,
16 you testified that certain behaviors were consistent
17 with depression or bipolar disorder: inappropriate
18 humor, impulsivity, impaired judgment, paranoia.
19 Is it also the case that people can possess any one
20 or combination of those traits, and not necessarily
21 be bipolar or depressed?

22 A. Yes.

23 Q. Okay.

24 Also, you, back in September, I guess

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1 your first visit, September 15, '05 where you listed
2 the DSM IV diagnoses and the Axis 5 70, which you
3 indicated was sort of a, his point on a scale of
4 zero to a hundred, given that 70 points, did I
5 understand you to say correctly that it was possible
6 that Mr. Pizzuto could have been functioning out
7 there in the workplace, in the world, socially,
8 whatever, at a level that would, where it would not
9 have been obvious that he was experiencing some sort
10 of bipolar disorder or depression?

11 A. Yeah, I think that is a possibility.

12 Q. Okay.

13 Do people with Mr. Pizzuto's disorder,
14 do they have the wherewithal to abstain from
15 substance abuse, or does the disorder rob them of
16 that ability to use whatever self-control they need
17 to use?

18 A. Well, I mean --

19 Q. If it's impossible to answer, you could say
20 so.

21 A. I think that, you know, I've seen, I've
22 seen people who have been successful in abstaining
23 from drugs and alcohol, and I have seen some people
24 who haven't been successful. So it's hard to make a

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1 generalization. I mean, you know, you would like to
2 think so, but it doesn't always happen.

3 Q. Okay. And then finally, one last question.
4 I know you testified that you, there was no way you
5 could independently confirm whether or not somebody
6 was actually trying to run Mr. Pizzuto down, but I
7 believe you testified earlier that it was
8 nonetheless your, your clinical impression that he
9 was prone to paranoia. Is that, did I understand
10 that correctly?

11 A. Yes.

12 Q. Okay, one last thing.

13 In your handwritten notes, on the first
14 page, you mention a suicide attempt in July of '03.

15 A. Yeah, that is what he told me.

16 Q. Okay. Were there ever any hospital records
17 or anything that would indicate --

18 A. No. As I said, he had never been
19 hospitalized. And I didn't, obviously, lock down
20 the details of what that was.

21 Q. And in the middle of that first page is he
22 saying, "I had some issues to which I probably
23 overreacted"?

24 A. Right.